2-8-93
Vol. 58 No. 24
Pages 747 -7714

federal register

Monday
February 8, 1993

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.

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

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

The **Federal Register** is published in paper, 24x microfiche format and magnetic tape. The annual subscription price for the **Federal Register** paper edition is $375, or $415 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $353; and magnetic tape is $37,500. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $4.50 for each issue, or $4.50 for each group of pages as actually bound; or $1.50 for each issue in microfiche form; or $175.00 per magnetic tape. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: March 5 at 9:00 a.m.
WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC
RESERVATIONS: 202–523–4538

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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.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Proclamation 6527 of February 3, 1993

National Women and Girls in Sports Day, 1993

By the President of the United States of America

A Proclamation

In 1972, Title IX was passed requiring colleges receiving government funds to provide equitable athletic programs for women, thus markedly expanding sports opportunities for women. As we enter the third decade of this law, it is fitting and proper that we recognize the importance of the skills gained through fitness and athletic experiences.

Sports and fitness activities greatly enhance emotional and physical well-being. Additionally, the communication and cooperation skills learned through athletic experiences play a key role in an individual's contributions at home, at work, and to society. At the same time, the bonds built through athletics help to break down the barriers of racism and prejudice.

Unfortunately, while the history of women in sports is rich and long, there has been limited national recognition of the significance of women's athletic achievements. The number of women in leadership positions as coaches, officials, and administrators has declined drastically over the years. Athletic opportunities for male students at the high school and collegiate level remain significantly greater than those for female students.

With the promise of a bright future, female athletes serve as a source of pride and unity for the United States. They represent the best of performance and dedication and serve as valuable role models to younger citizens.

The Congress, by House Joint Resolution 546, has designated February 4, 1993, as "National Women and Girls in Sports Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim February 4, 1993, as National Women and Girls in Sports Day. I urge all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of February, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93-3096
Filed 2-4-93; 2:11 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 58, No. 24
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice to Waive the Nonmanufacturer Rule for photographic film and video cassette recorders.

SUMMARY: The Small Business Administration (SBA) is establishing waivers of the Nonmanufacturer Rule for photographic film and video cassette recorders. The basis for waivers of the Nonmanufacturer Rule for these products is that there are no small business manufacturers or processors available to supply these products to the Federal government. The effect of these waivers is to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program for these items.

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: James Parker, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC, 20416, Tel: (703) 695-2435.

SUPPLEMENTARY INFORMATION: Public Law 100-656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the products of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations which implement this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal procurement market. To be considered available to participate in the Federal procurement market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual, and the second is the Product and Service Code established by the Federal Procurement Data System.

The SBA was asked to process requests for waivers of the Nonmanufacturer Rule for photographic film and video cassette recorders. SBA searched the Procurement Automated Source System (PASS) and Thomas Register, and published a notice seeking potential sources in the Commerce Business Daily. In addition, SBA published a notice of intent to grant a waiver of the Nonmanufacturer Rule in the **Federal Register** on December 15, 1992 (57 FR 59312). After a 15-day comment period, one comment was received but no small businesses were identified.

The one comment received recommended that we waive the class of products of photographic film covered by PSC 6750 (photographic supplies with a subcategory of unprocessed photographic film) instead of PSC 6770 (processed photographic film) listed in the notice. The class of products is intended by the SBA to include unexposed, unprocessed photographic film. Thus, the suggestion is incorporated in this notice.

Based on the above information, SBA is establishing waivers for photographic film (SIC code 3861, PSC code 6750) and video cassette recorders (SIC code 3651, PSC code 5836) pursuant to statutory authority under Public Law 100-656, Section 303(h). These waivers will be in effect indefinitely, but are subject to periodic review by the SBA.

Dated: January 25, 1993.

Robert J. Moffitt,

Associate Administrator for Procurement Assistance.

[FR Doc. 93-2689 Filed 2-5-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-ASW-17; Amendment 39-8280; AD 92-13-10]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 204B, 205A, 205A-1, 205B, 212, and 412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, 205A-1, 205B, 212, and 412 helicopters. This action requires replacement of certain tail rotor driveshaft hanger bearings and an interim daily inspection until replacement bearings are installed. This amendment is prompted by a fatal accident involving a BHTI Model 412 helicopter that experienced a tail rotor driveshaft bearing failure. The actions specified in this AD are intended to prevent possible failure of a tail rotor driveshaft hanger bearing, which could result in failure of the tail rotor driveshaft and subsequent loss of control of the helicopter.

DATES: Effective February 23, 1993.

Comments for inclusion in the Rules Docket must be received by March 15, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ASW-17, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007.

The applicable service bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, Rules Docket,

4400 Blue Mound Road, room 158, Bldg. 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Scott A. Horn, FAA, Rotorcraft Certification Office, ASW-170, 4400 Blue Mound Road, Fort Worth, Texas 76193-0170, telephone (817) 624-5177, fax (817) 740-3394.

SUPPLEMENTARY INFORMATION: On November 18, 1991, the FAA issued Priority Letter AD 91-24-16, applicable to certain BHTI Model 204B, 205A, 205A-1, 205B, 212, and 412 helicopters that requires a daily inspection of the tail rotor drive shaft hanger bearings. That action was prompted by a fatal accident involving a BHTI Model 412 helicopter that experienced a tail rotor driveshaft bearing failure. Inspections performed as part of the ongoing investigation found metal particles from the manufacturing process in the bearings. That condition, if not corrected, could result in possible failure of the tail rotor driveshaft and subsequent loss of control of the helicopter.

The manufacturer has informed the FAA that sufficient parts are now available to support parts replacement in the fleet. After careful review of the available data, including the notification of availability of bearings free of contamination, the FAA has determined that air safety and the public interest require the adoption of a superseding rule that requires replacement of contaminated bearings. Therefore, that priority letter is being superseded by this final rule to require replacement of contaminated bearings within the next 100 hours' time in service.

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 that 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 rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-ASW-17." 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 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. 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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. app. 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 92-13-10 Bell Helicopter Textron, Inc. (BHTI): Amendment 39-8280.

Docket No. 92-ASW-17. Supersedes Priority Letter AD 91-24-16, issued November 18, 1991, Docket No. 91-ASW-30.

Applicability: All BHTI Model 204B, 205A, 205A-1, 205B, 212, and 412 helicopters, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent possible failure of a tail rotor driveshaft hanger bearing that could result in failure of the tail rotor driveshaft and subsequent loss of tail rotor control, accomplish the following:

(a) Before further flight, after the effective date of this AD, determine the serial number (S/N) etched on the seal area of the tail rotor driveshaft hanger bearings, part number (P/N) 204-040-623-003 or 005. If the bearing has no permanently marked S/N, has a P/N 204-040-623-003 with S/N T0001 through T1743 or N4000 and subsequent, or has a P/N 204-040-623-005 with S/N NC3000 and subsequent; no further action is required by this AD.

(b) Within the next 100 hours' time in service after the effective date of this AD, replace the tail rotor driveshaft hanger bearings and bearing assemblies as follows in accordance with the applicable BHTI maintenance, repair, and overhaul manuals:

(1) For the Model 204B helicopters, remove each P/N 204-040-623-005 bearing that has a S/N with a prefix of T or N; replace with a P/N 204-040-623-005 bearing that has no S/N or a S/N of NC3000 and subsequent. This paragraph applies to parts with a prefix of N, but not with a prefix of NC.

(2) For the Model 205A, 205A-1 and 212 helicopters, accomplish the following:

(i) Remove each P/N 204-040-623-003 bearing that has a S/N T1744 and subsequent or N0001 through N3999; replace with a P/N 204-040-623-003 bearing that has no S/N, a S/N from T0001 through T1743 or a S/N of N4000 and subsequent.

(ii) Remove each bearing with P/N 204-040-623-005 that has a S/N prefix of T or N; replace with a P/N 204-040-623-005 bearing that has no S/N or a S/N of NC3000 and subsequent.

(3) For the Model 205B and 412 helicopters, remove each P/N 204-040-623-003 bearing that has a S/N T1744 and subsequent or N0001 through N3999; replace with a P/N 204-040-623-003 bearing that has no S/N, a S/N T0001 through T1743, or S/N of N4000 and subsequent.

(c) Before the first flight of each day, until the driveshaft hanger bearing is replaced in accordance with paragraph (b), accomplish the following inspection of the tail rotor driveshaft and tail rotor driveshaft hanger assemblies:

(1) Visually inspect the tail rotor driveshaft hanger bearings for grease leakage that continues for more than 10 hours' time in service after installation of a new bearing.

(2) Visually inspect the tail rotor driveshafts and driveshaft hanger assemblies for security and damage.

(3) Visually inspect the tail rotor driveshaft hanger assembly for an overheat condition and overheat indicator stripes for discoloration.

(4) Rotate the tail rotor driveshaft by hand while feeling the tail rotor driveshaft bearing housing for bearing binding or roughness.

(d) Before further flight, replace the tail rotor driveshaft hanger bearings with an airworthy part in accordance with the applicable BHTI maintenance, repair and overhaul manuals if the bearing assemblies exhibit signs of overheating, roughness or continued grease leakage.

(e) This AD supersedes Priority Letter AD 91-24-16, issued November 18, 1991, Docket No. 91-ASW-30.

(f) 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, Rotorcraft Certification Office, ASW-170, FAA, 4400 Blue Mound Road, Fort Worth, Texas. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Rotorcraft Certification Office.

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

(h) This amendment becomes effective February 23, 1993.

Issued in Fort Worth, Texas, on January 15, 1993.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93-2980 Filed 2-5-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 92-NM-117-AD; Amendment 39-8490; AD 93-02-08]

Airworthiness Directives; Boeing Model 727 Series Airplanes Equipped With Bendix Brakes Fitted With NASCO Rotors Installed in Accordance With Supplemental Type Certificate (STC) SA3948NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which requires that certain landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this AD are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program. This amendment is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. The actions specified by this AD are intended to prevent the loss of brake effectiveness during a high energy RTO.

EFFECTIVE DATE: Effective March 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Gfrerer, Aerospace Engineer, Mechanical/Environmental and Crashworthiness Section, ANM-131L, FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California 90806; telephone (310) 988-5338; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes was published in the **Federal Register** on September 23, 1992 (57 FR 43944). (A correction to that proposal was published in the **Federal Register** on October 2, 1992 (57 FR 45584).) That action proposed to require that certain landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this AD are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program.

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 supports the proposed rule.

Two commenters request (1) that the use of brake configurations with NASCO rotors be restricted until a clear reconciliation between airline service patterns and dynamometer tests is made, and (2) that brake wear pins be reduced by 25 percent to improve the margins of wear for estimated airline service pattern variation and replacement part variation. The commenters note that critical brake characteristics (including machined-to-worn brakes, rotor segment shrinkage, lining cup distortion, wear distribution, multi-tour reuse of rotors, total worn rotor stack weight, brake lining, rotor wear patterns, and mechanical integrity) must be known for the entire on-aircraft service life of a brake design in order to use dynamometer test results successfully to determine the worn-condition capability of the brakes. The FAA does not concur. The items listed previously have been evaluated and a comparison testing program has been performed. Results of the evaluation and testing revealed that NASCO rotors performed acceptably.

Two commenters, Allied-Signal Aerospace Company (Bendix Wheels and Brakes Division) and Boeing Commercial Airplane Group, voice objection to their names and part numbers appearing on brake assemblies once NASCO rotors have been installed. The commenters state that the modified brakes no longer represent the original design and are not a part of these companies' control number specifications. The FAA does not concur. The FAA's current policy is that, when a part is modified, the original placard and part number remain in place and a second placard is added identifying the name of the manufacturer that performed the modification and stating the approval means. In this case, NASCO permanently attached a placard to the brake housing listing the company's name, the rotor part number, the airplane on which the part would be installed, and the Supplemental Type Certificate (STC) number.

One commenter requests that the FAA acknowledge (1) that the proposed rule is not intended to address an unsafe condition that is unique only to NASCO rotor-equipped brakes, and (2) that the wear limits for NASCO rotor-equipped brakes are identical to those of Bendix rotor-equipped brakes, which are required by AD 92-12-08 (57 FR 29194, July 1, 1992). The commenter notes that although the notice makes reference to prior rulemaking that addressed the subject of brake wear limits, the notice does not explain clearly that this AD is a continuation of an earlier process applicable to all transport category airplanes, rather than a response to a

safety condition inherent to NASCO rotor-equipped brakes. The commenter states further that the notice fails to explain that NASCO rotor-equipped brakes are not affected any differently than the original equipment manufacturers' brakes. The commenter also indicates that the brake wear limit for Bendix brakes equipped with NASCO rotors installed on Boeing Model 727 series airplanes is identical to the wear limit for the original Bendix brake installed on those airplanes.

The FAA agrees that some clarification on these points is appropriate. The FAA has not received any reports of incidents involving NASCO rotor-equipped brakes. The incident that prompted rulemaking action to address worn brakes on all transport category airplanes heavier than 75,000 pounds involved a McDonnell Douglas Model DC-10 series airplane. In that incident, a Model DC-10 executed a rejected takeoff and was unable to stop on the runway due to the worn condition of its brakes. The unsafe condition addressed in this AD is not unique to NASCO rotor-equipped brakes. The FAA also acknowledges that results of tests performed by NASCO have shown that the maximum allowable wear limit for Bendix brakes equipped with NASCO rotors that are installed on Boeing Model 727 series airplanes is identical to that of the Bendix brakes originally installed on that airplane model.

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 690 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 375 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) will be approximately $3,160 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,432,500, or $3,820 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 it is contained in the Rules Docket. A copy of it 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, 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—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. app. 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:

93-02-08. Boeing: Amendment 39-8490. Docket 92-NM-117-AD.

Applicability: Model 727 series airplanes equipped with Bendix brakes fitted with NASCO rotors installed in accordance with Supplemental Type Certificate (STC) SA3948NM; and equipped with the brake part numbers identified in paragraph (a) of this AD; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after the effective date of this AD, inspect brakes having the brake part numbers specified below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within this limit.

BENDIX BRAKES FITTED WITH NASCO ROTORS INSTALLED IN ACCORDANCE WITH STC SA3948NM

Bendix P/N	Boeing P/N	Maximum wear limit (inches)
2601182-5	10-61287-22	1.8
2601182-6	10-61287-23	1.7

(b) Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits specified in paragraph (a) of this AD, into the FAA-approved maintenance inspection program.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(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) This amendment becomes effective on March 15, 1993.

Issued in Renton, Washington, on February 1, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-2981 Filed 2-5-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-07-AD; Amendment 39-8491; AD 92-27-11 R1]

Airworthiness Directives; McDonnell Douglas Model MD-11 and MD-11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to McDonnell Douglas Model MD-11 and MD-11F series airplanes, that currently requires a functional inspection for proper actuation of the fire bottle switch; a visual inspection of the fire shutoff handle cover assembly to verify whether proper clearance exists

between the fire shutoff handles, cover assembly, and rub strips in the flight compartment; and modification of discrepant parts. This amendment revises the required measurement for the minimum proper clearance between the fire shutoff handles, cover assembly, and rub strips in the flight compartment. This amendment is prompted by an error that appeared in the published version of the existing AD. The actions specified in this AD are intended to prevent inhibited operation of the engine emergency fire extinguisher system.

DATES: Effective February 8, 1993.

The incorporation by reference of certain publications listed in the regulation was previously approved by the Director of the Federal Register as of January 13, 1993 (57 FR 61791, December 29, 1992).

Comments for inclusion in the rules docket must be received on or before April 9, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-07-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5262; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: On December 17, 1992, the FAA issued AD 92-27-11, Amendment 39-8446 (57 FR 61791, December 29, 1992), which is applicable to McDonnell Douglas Model MD-11 and MD-11F series airplanes. That AD requires a functional inspection for proper actuation of the fire bottle switch; a visual inspection of the fire shutoff handle cover assembly to verify whether proper clearance exists between the fire shutoff handles, cover assembly, and rub strips in the flight compartment; and modification of discrepant parts. That action was prompted by a report that the engine fire extinguisher switches would not actuate, due to interference between fire shutoff handles and the cover assembly in the flight compartment. The actions specified in that AD are intended to prevent inhibited operation of the engine emergency fire extinguisher system.

Since the issuance of that AD, the FAA has been notified of an error that appeared in the published version of the AD document. Due to a typographical error, the measurement for the minimum proper clearance between the fire shutoff handles, cover assembly, and rub strips in the flight compartment was incorrectly indicated as "0.30 inch" in paragraph (a) of the AD. The correct measurement is "0.03 inch." It is necessary to revise the AD to specify this correct measurement in order to ensure that proper clearance between these items is obtained on all affected airplanes. Improper clearance could hinder the rotation of the fire shutoff handles. This condition, if not corrected, could result in inhibited operation of the engine emergency fire extinguisher system.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD revises AD 92-27-11 to require that proper clearance of 0.03 inch (0.76 mm) be obtained between the fire shutoff handles, cover assembly, and rub strips in the flight compartment. This AD continues to require a functional inspection for proper actuation of the fire bottle switch; a visual inspection of the fire shutoff handle cover assembly to verify whether proper clearance exists between the fire shutoff handles, cover assembly, and rub strips in the flight compartment; and modification of discrepant parts.

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 that 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 93-NM-07-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—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 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 39–8446 (57 FR 61791, December 29, 1992), and by adding a new airworthiness directive (AD), amendment 39–8491, to read as follows:

92–27–11 R1. McDonnell Douglas: Amendment 39–8491. Docket 93–NM–07–AD. Revises AD 92–27–11, Amendment 39–8446.

Applicability: McDonnell Douglas Model MD–11 and MD–11F series airplanes; as listed in McDonnell Douglas MD–11 Alert Service Bulletin A76–3, dated November 17, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inhibited operation of the engine emergency fire extinguisher system, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a functional inspection for proper actuation of the fire bottle switch, and a visual inspection of the fire shutoff handle cover assembly to verify whether a minimum clearance of 0.030 inch (0.76 mm) exists between the fire shutoff handles, cover assembly, and rub strips in the flight compartment, in accordance with the Accomplishment Instructions of McDonnell Douglas MD–11 Alert Service Bulletin A76–3, dated November 17, 1992.

(1) If any fire bottle switch actuates (audible click), and if any handle clearance is found to be 0.030 inch (0.76 mm) or greater, no further action is necessary; or

(2) If any fire bottle switch does not actuate (click is not audible), and/or any handle clearance is not found to be 0.030 inch (0.76 mm) or greater, prior to further flight, trim the cover assembly handle cutout and rub strips to achieve a clearance of 0.030 inch (0.76 mm) or greater, and repeat the functional inspection requirements for proper switch actuation in accordance with paragraph (a) of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles ACO.

(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 functional inspection and trim shall be done in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A76–3, dated November 17, 1992. This incorporation by reference was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of January 13, 1993 (57 FR 61791, December 29, 1992). Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 8, 1993.

Issued in Renton, Washington, on February 1, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2982 Filed 2–5–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 92–ASO–2]

Establishment of VOR Federal Airway V–373; NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes VOR Federal Airway V–373 from Greensboro, NC, direct to Sand Hills, NC. Currently, there is no airway between those terminal areas, causing circuitous routing for operations between them. This action will improve flight planning and save fuel.

EFFECTIVE DATE: 0901 UTC, April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On September 21, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish V–373 between Greensboro, NC, and Sand Hills, NC (57 FR 33908). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in § 71.123 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes V–373 between Greensboro, NC, and Sand Hills, NC. Currently, there is no airway between these terminals, thereby, causing a circuitous routing for operations between them. This action will improve flight planning and save fuel.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–373 [New]

From Greensboro, NC, to Sand Hills, NC.

* * * * *

Issued in Washington, DC, on January 28, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–2926 Filed 2–5–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27127; Amdt. No. 1530]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5.

Materials incorporated by reference are available for examination or purchase as stated above.

The large number or SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPS and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on January 29, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective April 1, 1993*

Jonesboro, AR, Jonesboro Muni, VOR RWY 23, Amdt. 9
Paragould, AR, Kirk Field, VOR RWY 4, Amdt. 3
Paragould, AR, Kirk Field, NDB RWY 4, Amdt. 4
Miami, FL, Dade-Collier Training and Transition, NDB RWY 9, Amdt. 12
Miami, FL, Dade-Collier Training and Transition, ILS RWY 9, Amdt. 13
Jesup, GA, Jesup-Wayne County, NDB RWY 10, Amdt. 1
Jesup, GA, Jesup-Wayne County, NDB RWY 28, Amdt. 2
Moultrie, GA, Moultrie Muni, VOR RWY 4, Amdt. 13, CANCELLED
Kahului, HI, Kahului, LOC/DME (BC) RWY 20, Amdt. 12, CANCELLED

** * * Effective March 4, 1993*

Rochester, NY, Greater Rochester Intl, ILS RWY 22, Amdt. 5
Rochester, NY, Greater Rochester Intl, RADAR 1, Amdt. 14
Blacksburg, VA, Virginia Tech, LOC RWY 12, Amdt. 3
Seattle, WA, Seattle-Tacoma Intl, ILS RWY 16R, Amdt. 11
Watertown, WI, Watertown Muni, NDB RWY 5, Orig.
Watertown, WI, Watertown Muni, NDB RWY 23, Orig.
Watertown, WI, Watertown Muni, NDB RWY 5, Amdt. 2, CANCELLED
Watertown, WI, Watertown Muni, NDB RWY 23, Amdt. 4, CANCELLED
Watertown, WI, Watertown Muni, VOR/DME RNAV RWY 5, Amdt. 2

** * * Effective January 15, 1993*

Auburn-Lewiston, ME, Auburn-Lewiston Muni, ILS RWY 04, Amdt. 8

[FR Doc. 93–2923 Filed 2–5–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 3c

[Docket No. RM93–6–000]

Repeal of Certain Standards of Conduct Provisions in Part 3c

AGENCY: Federal Energy Regulatory Commission (Commission).

ACTION: Final rule.

SUMMARY: The Commission is deleting portions of its regulations on Standards of Conduct for Commission employees. As of February 3, 1993, new standards of conduct issued by the Office of Government Ethics (OGE), applicable to the entire Executive Branch, will become effective. The portions of the Commission's current standards superseded by OGE's regulations are hereby repealed.

EFFECTIVE DATE: This final rule is effective February 3, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Arnold, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208–0457.

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 business hours in room 3104, 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, 9 data bits, and 1 stop bit. The full text of this document 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, located in room 3106, 941 North Capitol Street, NE., Washington, DC 20426.

(Issued February 2, 1993)

I. Introduction

The Federal Energy Regulatory Commission (Commission) is deleting most of the standards of conduct for Commission employees in Part 3c of its regulations.[1] These standards are repealed and superseded by government-wide standards of conduct regulations issued by the Office of Government Ethics (OGE), effective February 3, 1993.[2] With the deletion of most part 3c provisions, there is no further need to retain separate subparts for employees, special employees, and Commissioners. The remaining provisions will therefore be combined and made applicable to all Commission officers and employees.

II. Background and Discussion

For many years, officers and employees of the executive branch of the Federal Government have been governed by "a jumble of differing and sometimes-conflicting agency-specific conduct regulations."[3] The Commission's individual standards of conduct for employees (subpart A), special employees (subpart B), and Commissioners (subpart C) are codified in part 3c (18 CFR part 3c) of the regulations.

Early in 1989, the President's Commission on Federal Ethics Law Reform recommended that the system of individual agency ethics regulations be replaced by uniform, government-wide regulations. On April 12, 1989, President Bush issued Executive Order No. 12674, directing OGE to establish a single, comprehensive set of executive branch standards of ethical conduct. Subsequently, the Ethics Reform Act of 1989 (Pub. L. No. 101–194, November 30, 1989) named OGE as "supervising ethics office" for all executive branch employees in connection with the

[1] 18 CFR part 3c.

[2] 57 FR 35005, Aug. 7, 1992.

[3] Statement of Stephen D. Potts, Director of the Office of Government Ethics, August 6, 1992.

financial disclosure requirements, and authorized OGE to adopt government-wide regulations covering gifts to Federal employees, limitation on outside employment and honoraria, and other ethics issues.

On August 7, 1992, OGE issued a final rule establishing uniform standards of conduct for all executive branch employees.[4] The rule covers a broad range of ethical concerns, including gifts from outside sources, conflicting financial interests and disqualification requirements, limitations on outside activities, seeking other employment, and misuse of a government position. The rule will be effective on February 3, 1993, and, upon becoming effective, will supersede most individual agency standards of conduct. To avoid confusion as to which standards are applicable, OGE has instructed agencies to repeal all their superseded ethics regulations so that they can be removed from the Code of Federal Regulations. Accordingly, effective February 3, 1993, the Commission will repeal nearly all of its standards of conduct in part 3c because they will be superseded by OGE regulations.[5]

There are several exceptions. OGE regulations permit an agency to supplement government-wide ethics regulation if it determines a supplemental regulation is "necessary and appropriate" in view of its program and operations. 5 CFR 2635.105. Supplemental regulations require the concurrence of OGE. OGE has emphasized that such regulations should be used sparingly, for the purpose of meeting particularized needs or concerns of specific agencies; they may not be used to negate or revoke the OGE regulations. Specifically, OGE regulations are meant to establish uniform rules of conduct for all executive branch employees, rather than simply create a "floor" upon which agencies are free to place their own stricter standards.[6] "The uniformity required by the Executive order cannot be achieved if agencies can pick and choose which provisions they adopt or override." 57 FR 35010. Also, agencies may retain regulations or instructions which, apart from OGE regulations, they have independent authority to issue.

Consistent with these exceptions, the Commission will retain the following existing provisions: (1) The prohibition against ownership or purchase of the securities of a jurisdictional company (currently sections 3c.5(b)(3)(i), 3c.106(d)(4)(i), and 3c.204(b)(2)); the provisions barring the disclosure of information acquired during the course of an examination of books or other accounts (existing sections 3c.6(d), 3c.107(b)(3)) and 3c.205(b)(3)); and the prohibition against disclosure of the nature and time of any proposed Commission action (sections 3c.6(e), 3c.107(b)(4), and 3c.205(b)(4)).

OGE's final rule explicitly recognizes that agencies may adopt supplemental regulations prohibiting or restricting employees from acquiring certain financial interests or classes of financial interests. 5 CFR 2635.403(a). Until a supplemental regulation can be adopted, OGE is allowing existing prohibitions against financial interests to continue in effect for up to one year beyond the February 3, 1993 effective date of OGE regulations. Further, apart from OGE regulations, Commissioners and certain senior Commission staff members are barred by statute from owning shares of energy companies. (Section 602(a) of the DOE Act, 42 U.S.C. 7212(a)). Therefore, the existing Commission prohibition against the ownership of securities of jurisdictional companies will be retained until such time as the Commission can consider the need for a supplemental regulation to deal with this issue. However, no purpose would be served in retaining the detailed financial reporting requirements contained in sections 3c.5 and 3c.7. These requirements adopted by our predecessor, the Federal Power Commission, before passage of the DOE Act and the Ethics in Government Act of 1978, describe long out-of-date forms and procedures that were replaced more than a decade ago by current financial reporting requirements.[7]

The other surviving provisions are being retained on the basis of independent statutory authority. The prohibition against the disclosure of audit materials merely summarizes statutory provisions in section 301(b) of the Federal Power Act (16 U.S. 825(c)) and section 8(b) of the Natural Gas Act (15 U.S.C. 717g). The requirement that Commission employees must treat information about proposed Commission action as confidential is a rule of agency practice and procedure. It is founded on the Commission's statutory authority to adopt such procedural and administrative rules as are necessary to exercise its functions. (42 U.S.C. 7171(f)). Both requirements are also fully consistent with OGE's rules governing the use of nonpublic information. 5 CFR 2635.703.

Finally, the Commission is eliminating the three separate subparts of part 3c (covering employees, special employees, and Commissioners, respectively) and is combining them into one unit. With the elimination of most provisions of part 3c, there is no longer a need for the three separate subparts. For purposes of the remaining provisions the term "employee" (as in OGE's regulations) will refer to Commissioners and all members of the staff.

III. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[8] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[9] The Commission therefore certifies that, pursuant to section 605(b) of the RFA, the deletion of these standards of conduct provisions will not have a significant economic impact on a substantial number of small entities. This is a procedural rule affecting Federal employees. It does not impact small entities as defined in the RFA.

IV. Environmental Statement

The Commission concludes that issuance of this rule would not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[10] This rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[11]

V. Information Collection Statement

The Office of Management and Budget's (OMB's) regulations require

[4] OGE earlier issued an interim rule dealing with the prohibition on honoraria, and limits on outside earned income and employment by certain senior noncareer employees. 5 CFR part 2636, 56 FR 1721–1730, January 7, 1991.

[5] Commission employees are also subject to some of the Conduct of Employees regulations of the Department of Energy, 10 CFR part 1010 *et seq.* This rule makes no change in those regulations.

[6] 57 FR 35009–35010.

[7] Current financial disclosure procedures are detailed in Commission Administrative Directive AD 11–1A, adopted July 15, 1986.

[8] 5 U.S.C. 601–612.

[9] Section 601(c) of the RF . defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. 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. 632(a).

[10] See Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR Part 380).

[11] See 18 CFR 380.4(a)(1).

that OMB approve certain information collection requirements imposed by agency rule.[12] However, this rule contains no information collection requirements and therefore is not subject to OMB approval.

VI. Administrative Findings and Effective Date

The Administrative Procedure Act (APA)[13] requires rulemakings to be published in the **Federal Register**. The APA generally mandates that an opportunity for comment be provided when an agency promulgates regulations. Notice and comment are not required, however, where a rule relates to agency personnel or agency organization, procedure or practice or when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[14] The Commission finds that notice and comment are unnecessary for this rulemaking. The Commission is merely deleting regulations that will be superseded by OGE's government-wide regulations.

This final rule relates to agency personnel and agency organization, procedure or practice. It deletes regulations no longer valid after OGE's regulations become effective, making no substantive changes. The Commission, therefore, finds good cause to make this rule effective upon the effective date of 5 CFR part 2635, February 3, 1993.

List of Subjects in 18 CFR Part 3c

Conflict of interests.

In consideration of the foregoing, the Commission amends part 3c of chapter I of title 18 of the Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 3c—STANDARDS OF CONDUCT

1. The authority citation for Part 3c is revised to read as follows:

Authority: 5 U.S.C. 7351, 7353, App.; 15 U.S.C. 717g; 16 U.S.C. 825(c); 42 U.S.C. 7211–7218; E.O. 12674, 54 FR 15159, 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105.

§§ 3c.1—3c.4r, 3c.—7 3c.11 [Removed]; §§ 3c.5 and 3c.6 [Amended]

2. The following sections are removed: §§ 3c.1 through 3c.5(b)(2), § 3c.5(b)(3)(ii) through 3c.5(e), § 3c.6 (a) through (c) and (f) through (j), and §§ 3c.7 through 3c.11.

§ 3c.5 [Amended]

3. Section 3c.5(b)(3)(i) is retained and redesignated as § 3c.1.

§ 3c.6 [Amended]

4. Section 3c.6 (d) and (e) is retained and redesignated as § 3c.2 (a) and (b).

Subpart B (§§ 3c.101–3c.112)—[Removed]

5. Subpart B, consisting of sections 3c.101 through 3c.112, is removed.

Subpart C (§§ 3c.201–3c.206)—[Removed]

6. Subpart C, consisting of sections 3c.201 through 3c.206, is removed.

[FR Doc. 93–2936 Filed 2–5–93; 8:45 am]
BILLING CODE 6717–01–M

[12] 5 CFR part 1320.

[13] 5 U.S.C. 551–559.

[14] 5 U.S.C. 553(b)(B).

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18 CFR Part 381

[Docket No. RM92–3–001]

Annual Update of Commission Filing Fees

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order dismissing rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is dismissing a request for rehearing of its annual updating of its filing fees. The request for rehearing objected to the updated filing fee for applications under section 203 of the Federal Power Act, 16 U.S.C. 824b, which fee now has been eliminated entirely.

EFFECTIVE DATE: This order is effective January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence Greenfield, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–0415.

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, at 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 order will be available on CIPS for 10 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.

Order Dismissing Rehearing

Issued January 22, 1993.

On May 15, 1992, UtiliCorp United Inc. (UtiliCorp) filed a request for rehearing of the Commission's order issued in this proceeding on April 16, 1992. Annual Update of Commission Filing Fees, 57 FR 15224 (April 27, 1992), III FERC Stats. & Regs. ¶ 30,941 (1992). For the reasons given below, UtiliCorp's request for rehearing will be dismissed.

Background

On April 16, 1992, the Commission, through its designee the Executive Director, updated its filing fees pursuant to 18 FR 381.104. The filing fees updated included the filing fee for applications under section 203 of the Federal Power Act, 16 U.S.C. 824b (1988)—which increased from $14,530 to $16,620. Compare 18 CFR 381.509 with III FERC Stats. & Regs. at 30,491.

On rehearing, UtiliCorp argues that the Commission erred by charging all section 203 applications—both major merger applications and other, simpler applications (such as dispositions of transformers or transmission lines)—the same filing fee. UtiliCorp argues that the costs of major merger applications are spread over the filing fees for all section 203 applications, driving up the filing fees for all such applications. UtiliCorp urges the Commission to reform its filing fees for section 203 applications to differentiate between major merger applications and other, simpler section 203 applications.

Discussion

The gravamen of UtiliCorp's request for rehearing is not the updating of the filing fees generally, or even the updating of the filing fees for section 203 applications. Rather, it is that the Commission has (and has always had) a single filing fee applicable to all section 203 applications. A proceeding involving the annual updating of the filing fees is not an appropriate forum to raise an objection to the charging of

a single filing fee for all section 203 applications.

In addition, effective on January 4, 1993, the Commission eliminated its filing fees for various applications including section 203 applications.[1] This action effectively moots UtiliCorp's request for rehearing.[2]

Accordingly, for the reasons given above, UtiliCorp's request for rehearing will be dismissed.

The Commission Orders

UtiliCorp's request for rehearing is hereby dismissed.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 93-2935 Filed 2-5-93; 8:45 am]

BILLING CODE 6701-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 254

RIN 1010-AB81

Spill-Response Plans for Offshore Facilities Including State Submerged Lands and Pipelines

AGENCY: Minerals Management Service, Interior.

ACTION: Interim final rule.

SUMMARY: The Federal Water Pollution Control Act (FWPCA) as amended by the Oil Pollution Act of 1990 (OPA) requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. After that date, a facility for which a response plan is required by the act may not handle, store, or transport oil unless a response plan has been submitted. This interim rule establishes requirements for spill-response plans for offshore facilities including associated pipelines. The interim rule provides necessary guidance to operators for preparing and submitting spill-response plans that are required as a condition of operation beyond the February 18, 1993, statutory deadline.

EFFECTIVE DATE: This interim rule is effective February 18, 1993. This interim rule will expire on February 18, 1995, or when superseded by a final rule.

FOR FURTHER INFORMATION CONTACT: Lawrence H. Ake or John V. Mirabella, Engineering and Technology Division, telephone (703) 787-1600.

SUPPLEMENTARY INFORMATION: In August 1990, Congress passed OPA which amended section 311(j) of the FWPCA by strengthening provisions concerning oil-spill prevention efforts and spill-response capability.

Under Executive Order (E.O.) 12777, the Minerals Management Service (MMS) has responsibility under FWPCA for issuing regulations requiring owners or operators of offshore facilities to prepare and submit spill-response plans. The FWPCA requires that by February 18, 1993, owners or operators of offshore facilities, including associated pipelines, prepare and submit response plans and ensure the availability of private personnel and equipment to contain discharges of oil and hazardous substances. The new authorities apply to all offshore areas including State submerged lands but not to deepwater ports subject to the Deepwater Ports Act (33 U.S.C. 1501 *et seq.*).

An advance notice of proposed rulemaking (ANPR) was published in the **Federal Register** on August 12, 1992 (57 FR 36032). That notice informed the public that MMS is preparing to develop regulations governing the establishment of procedures, methods, and equipment to prevent and to contain discharges of oil and hazardous substances under section 311(j)(1)(C) of FWPCA; preparation and submission of response plans under section 311(j)(5) of FWPCA and section 4202(b)(4) of OPA; and periodic inspection of containment booms and response equipment under section 311(j)(6)(A) of FWPCA. The notice also solicited information concerning the development of these requirements. The MMS is proceeding with review and analysis of comments received and will shortly begin development and publication of a proposed rule covering all aspects of these requirements.

Of immediate concern, however, is the need to allow owners and operators of facilities to operate under an approved spill-response plan as soon as possible. This need is dictated by a mandate of OPA that owners or operators of facilities submit response plans by February 18, 1993. Failure to do so will mean that a facility cannot be used to handle, store, or transport oil until the owner or operator submits a plan. To meet this date, MMS has developed interim rules that will ensure that spill-response plans of sufficient quality are being developed as well as provide a means for facility owners to comply with the February 18, 1993, deadline. This process will ensure that spill-response plans are in place at the earliest possible date and that the beneficial environmental effects of spill-response plans can be realized while more extensive regulations to implement OPA are being developed.

The MMS has established an expiration date for the interim rule of February 18, 1995. During the time that the interim rule is in effect, it will allow for an orderly submission and processing of spill-response plans. The MMS will also use this time period for completion of the final rule.

In developing these interim rules on spill-response plans, MMS has taken full advantage of the fact that requirements which meet most of the goals of OPA are already in place under State or Federal laws. The MMS, for example, currently requires a comprehensive oil-spill contingency plan (OSCP) from lessees operating in the Outer Continental Shelf (OSC). Several coastal States currently have requirements for spill-response plans as well, and other States plan to issue requirements in the near future. These requirements were developed in response to the same concerns that prompted passage of OPA.

The OPA requires that spill-response plans identify and ensure the availability of private personnel and equipment necessary to respond to a worst case discharge. For the purpose of this interim rule, MMS is considering a continuous oil spill from a facility (e.g., well blowout) to be a worst case discharge. This is consistent with current requirements for OSCP's contained in MMS regulations. The MMS requested comments on the definition of a worst case discharge in the ANPR published August 12, 1992, and may modify the definition based on those comments when final regulations are published.

These interim rules will ensure that plans will be reviewed under one set of regulations regardless of where the facility is located. The interim rules will not require owners and operators now in compliance with MMS regulations at 30 CFR 250.42 to submit new documentation for facilities located in the OCS. Mobile drilling unit operations will be covered by lessee response plans.

Those with MMS approved OSCP's for facilities in the OCS may now expand those plans to include facilities in State waters of the same geographic area. Owners and operators of facilities in State waters with plans approved by the State are required to submit a copy

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[1] Elimination of Certain Filing Fees in parts 346 and 381, Order No. 548, 58 FR 2968 (Jan. 7, 1993), III FERC Stats. & Regs. ¶____(1993).

[2] On March 11, 1992, UtiliCorp filed a motion in Docket No. RM91-9-000, the 1991 filing fee updating proceeding, asking that the Commission reopen that proceeding for the same reasons given here. The elimination of the filing fee for section 203 applications moots this motion as well.

of the plan to MMS as well as information pertaining to the approval. Comprehensive requirements for developing and submitting spill-response plans are given for owners and operators that do not fall in either of these categories.

The requirements addressing other aspects of the August 12, 1992, notice (e.g., spill prevention, equipment inspection, spills of hazardous materials) will be addressed later in other proposed regulations.

Author

This document was prepared by John V. Mirabella and Larry H. Ake, Engineering and Technology Division, MMS.

E.O. 12291

The Department of the Interior (DOI) has determined that this interim rule does not meet the criteria for a major rule under E.O. 12291.

The rule will have virtually no effect on platform facilities in Federal waters which make up over 75 percent of the population of offshore platforms. Many facilities in State waters will be able to meet the requirements of the interim rule by making minor modifications to existing plans. The MMS estimates that less than 10 percent of offshore platform facilities will need new plans.

Pipeline facilities in both Federal and State waters will need to develop spill-response plans for the first time. Most right-of-way holders, however, are affiliated with producing companies and can meet the requirements of the interim rule by making modifications to existing plans.

The MMS estimates that fewer than 550 plans will need to be submitted at a cost of approximately $5,500,000, far below the threshold of $100,000,000 for a major rule.

Regulatory Flexibility Act

The DOI has determined that this interim rule will not have a significant effect on a substantial number of small entities. In general, the entities that engage in offshore activities are not considered small due to the technical and financial resources and experience necessary to safely conduct such activities.

Administrative Procedure Act

The MMS has determined, in accordance with 5 U.S.C. 553(b)(3)(B) of the Administrative Procedure Act, that a notice of proposed rulemaking is not required and is impracticable in the issuance of this rule. The interim rule is needed to provide guidance to owners and operators of offshore facilities concerning the preparation and submittal of spill-response plans. Plans are required to be submitted by February 18, 1993, by the FWPCA as amended by OPA. Absent any rulemaking, the OPA itself imposes the obligation to submit spill-response plans. This interim rule merely interprets the statutory provision in providing that plans already in existence for spill-response satisfy the OPA requirements until a new rulemaking occurs. For the remaining facilities that previously did not have spill-response plan submission responsibility, good cause exists for this interim rule because those operators of facilities must, under the OPA, submit plans or else face shutdown after February 18, 1993. This interim rule provides the guidance for those plans until the agency is able to develop further guidance after notice and comment. Absent guidance from this interim rule, the public interest and health and safety goals of the OPA would not be met.

The MMS has determined, in accordance with 5 U.S.C. 553(d)(2), that this deadline presents a good cause to waive the normal 30-day waiting period for the rule to become effective. The interim rule will allow owners and operators of offshore facilities to continue operations during notice and comment and the development of final rules.

Paperwork Reduction Act

The collections of information contained at 30 CFR 254.4 in this rule and submitted in accordance with 30 CFR 250.42 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0057.

The collection of information contained at 30 CFR 254.5 in this rule has been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0091. Public reporting burden for this collection of information is estimated to average 48 hours per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the above collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 2300, 381 Elden Street, Herndon, Virginia 22070–4817, and the Office of Management and Budget, Paperwork Reduction Project (1010–0091), Washington, DC 20503.

E.O. 12778

The DOI has certified to OMB that this interim regulation meets the applicable standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The MMS has examined the interim rulemaking and has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

List of Subjects in 30 CFR Part 254

Continental shelf, Environmental protection, Oil and gas development and production, Oil and gas exploration, Pipelines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: January 6, 1993.

Richard Roldan,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, 30 CFR ch. II, subchapter B—Offshore, is amended as follows:

1. Part 254 is added to read as follows:

PART 254—SPILL-RESPONSE PLANS FOR OFFSHORE FACILITIES INCLUDING STATE SUBMERGED LANDS AND PIPELINES

Sec.
254.0 Authority for information collection.
254.1 Definitions.
254.2 General requirements.
254.3 Submission of information.
254.4 Offshore facilities in Federal waters.
254.5 Offshore facilities in State waters.
254.6 Compliance with plan.
254.7 Determination of adequacy

Authority: 33 U.S.C. 1321.

§ 254.0 Authority for information collection.

The information collection requirements in 30 CFR part 254 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0091. The information is being collected to inform the Minerals Management Service (MMS) of operator and lessee preparations for response to potential pollution of the offshore environment.

The requirement to respond is mandatory. The public reporting burden for this collection of information is estimated to average 48 hours per response including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and

reviewing the collection of information. Send comments regarding the burdens indicated for a specific information collection or any other aspect of the collection of information pursuant to the provisions of this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070–4817 and the Office of Management and Budget; Paperwork Reduction Project 1010–0091; Washington, DC 20503.

§ 254.1 Definitions.

For the purposes of this part:

Facility means any structure or group of structures which are used for one or more of the following purposes: Exploring for, drilling for, producing, storing, processing, or transporting oil. The term excludes deepwater ports and their associated pipelines but includes other pipelines used for one or more of these purposes.

Offshore means the area seaward of the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the area seaward of the line marking the limit of inland waters.

Oil means hydrocarbons produced at the wellhead in liquid form (includes distillates or condensate associated with produced natural gas), as well as oil of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

Operator means the individual, partnership, firm, or corporation having control or management of operations on the leased area where the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act, as amended, for the area in which the facility is located.

Pipeline means new and existing pipe and any equipment, appurtenance, or building used or intended for use in the transportation of oil. Pipelines do not include vessels such as barges or shuttle tankers used to transport oil from offshore facilities.

Regional Supervisor means the MMS officer with responsibility and authority for operations or other designated program functions within an MMS Region.

§ 254.2 General requirements.

(a) Not later than February 18, 1993, all offshore facilities shall have submitted a spill-response plan, thereby meeting the provisions of § 254.4 or § 254.5 of this part.

(b) Compliance with this part may be achieved by a lessee, by an operator on behalf of a lessee, or by a pipeline right-of-way holder.

(c) The spill-response plans may be for a single lease or facility, or for a group of leases or facilities of a single operator or pipeline right-of-way holder, including affiliates which are located in the same geographic area.

(d) The spill-response plans submitted to the Minerals Management Service (MMS) shall be reviewed and updated annually, with all modifications submitted to the MMS office of original submission. The spill-response plans originally submitted to a State shall be updated in accordance with the requirements of the State.

§ 254.3 Submission of information.

Information submitted pursuant to this section shall be sent to the appropriate MMS office listed below.

(a) For facilities offshore Alaska:

Minerals Management Service, Regional Supervisor, Field Operations, Alaska OCS Region, 949 East 36th Avenue, Anchorage, AK 99508–4302

(b) For offshore facilities in the Atlantic Ocean:

Minerals Management Service, Regional Director, Atlantic OCS Region, 381 Elden Street, Herndon, VA 22070–4817

(c) For offshore facilities in the Gulf of Mexico:

Minerals Management Service, Regional Supervisor, Field Operations, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, LA 70123–2394

(d) For offshore facilities in the Pacific Ocean (except offshore Alaska):

Minerals Management Service, Regional Supervisor, Field Operations, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, CA 93010–6064

§ 254.4 Offshore facilities in Federal waters.

Lessees or facility operators of offshore facilities in Federal waters shall develop, submit, and maintain an oil-spill contingency plan (OSCP) prepared in accordance with 30 CFR 250.42. Any plan that does not provide for response equipment testing or response drills shall be amended, and the amendment shall be submitted to MMS by February 18, 1993.

§ 254.5 Offshore facilities in State waters.

Operators of offshore facilities in State waters shall be in compliance with paragraphs (a), (b) or (c) of this section.

(a) Amend an OSCP approved by MMS to include facilities in State waters of the same geographic area;

(b) Provide a copy of a spill-response plan that has been submitted to a State agency for approval as well as the following information:

(1) A list of the offshore facilities and leases covered by the plan.

(2) Name and address of agency to which the plan was submitted.

(3) Date plan was submitted.

(4) If the plan received formal approval, the name of the approving organization, the date of approval, and a copy of the approval letter if one was issued.

(5) Identification of any regulations or standards under which the plan was prepared; or

(c) Submit an oil-spill response plan (OSRP) to the appropriate MMS office identified in 30 CFR 254.3. The OSRP shall contain the following:

(1) A summary of available oil-spill trajectory analyses which are specific to the area of operations. The summaries shall specify those environmentally sensitive areas which may be impacted and strategies to be used for their protection.

(2) Identification of response equipment and response times together with materials, support vessels, and procedures to be employed in responding to a worst case discharge and spills of short duration and limited maximum volume (e.g., tank overflows, hose failures). For the purposes of this section, a capability to respond to a worst case discharge requires the ability to respond to a continuous oil spill (e.g., well blowout). Response equipment and strategies shall be suitable for anticipated environmental conditions in the area of operations.

(3) A dispersant-use plan including an inventory of the dispersants which might be proposed for use, a summary of toxicity data for each dispersant, a description of the types of oil on which each dispersant is effective, a description of dispersant application equipment and procedures, and an outline of the procedures to be followed in obtaining approval for dispersant use.

(4) Provisions for response drills and for inspecting, testing, and maintaining response equipment.

(5) Procedures for the purpose of early detection and timely notification of an oil spill, including a current list of names, telephone numbers, and addresses of the responsible persons and alternates who are to receive notification of an oil spill and the names, telephone numbers, and addresses of regulatory organizations and agencies to be notified when an oil spill is discovered.

(6) An inventory of applicable equipment, materials, and supplies

which is available locally and regionally.

(7) Well-defined and specific actions to be taken after discovery of an oil spill including the following:

(i) Designation (by name or position) of an oil-spill response operating team comprised of trained personnel available within a specified response time and a description of the training that such personnel will receive;

(ii) Designation (by name or position) of a trained spill-response coordinator who is charged with the responsibility and is delegated commensurate authority for directing and coordinating response operations; and

(iii) A planned location for a spill-response operations center and a reliable communications system for directing the coordinated overall response operations.

(8) Provisions for disposal of recovered oil, oil-contaminated material, and other oily wastes.

(9) Provisions for monitoring and predicting spill movement.

(10) In Alaskan waters only, provisions for ignition of an uncontrollable oil spill and the guidelines to be followed in making the decision to ignite.

§ 254.6 Compliance with plan.

Responsible parties or their authorized representatives shall conduct operations in accordance with all plans submitted or referenced pursuant to this part.

§ 254.7 Determination of adequacy.

If the Regional Supervisor determines at any time that a response plan submitted to MMS or a State is inadequate, the Regional Supervisor will specify deficiencies in the plan, and the responsible party shall take the actions necessary to modify the plan.

[FR Doc. 93-2995 Filed 2-4-93; 10:08 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-92-96]

Special Local Regulations for Marine Events; The Great Chesapeake Bay Swim Event, Chesapeake Bay, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.507 for the Great Chesapeake Bay Swim Event to be held on June 13, 1993. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim, and their attending personnel.

EFFECTIVE DATES: The regulations in 33 CFR 100.507 become effective from 6:30 a.m. until 1 p.m., on June 13, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204, or Commander, Coast Guard Group Baltimore (410) 576-8516.

DRAFTING INFORMATION: The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Kathleen A. Duignan, project attorney, Fifth Coast Guard District Legal Staff.

DISCUSSION: Mr. Charles Nabit, a representative of the March of Dimes, submitted an application on October 8, 1992 to hold the Great Chesapeake Bay Swim Event on June 13, 1993. Approximately 600 swimmers will start from Sandy Point State Park and swim between the William P. Lane Jr. Memorial Twin Bridges to the Eastern Shore. This is the type of event contemplated by these regulations and the safety of the participants depends upon control of vessel traffic, therefore the regulations in 33 CFR 100.507 are implemented. During the swim itself, all vessel traffic will have to be stopped, however vessel traffic will be permitted to transit the regulated area as the swim progresses, so commercial traffic should not be severely disrupted.

Dated: January 29, 1993.

W.T. Leland,

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

[FR Doc. 93-2958 Filed 2-5-93; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-4591-1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Pioneer Sand Company Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Pioneer Sand Company Superfund Site (the Site) in Pensacola, Florida, from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Florida have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Florida have determined that remedial actions conducted at the Site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Patsy Goldberg, Remedial Project Manager, South Superfund Remedial Branch, Waste Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347-2643, or Betty Winter, Community Relations Coordinator, at the same address and phone number as noted above.

ADDRESSES: Comprehensive information on this Site is available at the following addresses:

EPA Region IV Public Docket; U.S. Environmental Protection Agency, Region IV; 345 Courtland Street, NE., Atlanta, Georgia 30365, Hours: Mon-Fri 8 a.m.-4 p.m.

and

West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida, Hours: M-TH 9 a.m.-8 p.m., Fri-Sat 9 a.m.-5 p.m., Sun 1-5 p.m.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is:

Pioneer Sand Company Superfund Site, Pensacola, Florida

A Notice of Intent to Delete for this Site was published December 1, 1992 (57 CFR 56882). The closing date for comments on the Notice of Intent to Delete was January 1, 1992. EPA received one comment letter from the U.S. Navy, one of two settlors named in the Consent Decree for the Site. The settlor was concerned that the delisting of the Site one and one half years after cleanup might impose additional financial burdens in the event that the

Site should be restored to the NPL. In its response, EPA cites the section in the National Contingency Plan (NCP) that allows for restoration of the Site to the NPL without application of the Hazardous Ranking Scoring (HRS) process. EPA's detailed response to the comment can be found in the Responsiveness Summary filed in the EPA, Region IV Deletion Docket.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3). Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR part 300

Air pollution control, Hazardous waste.

Dated: January 28, 1993

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended under Florida by removing the site for "Pioneer Sand Company Site, Warrington"; and by revising the total number of sites, "1,081" to read "1,080".

Donald Guinyard,

Acting Regional Administrator, USEPA Region 4.

[FR Doc. 93–2956 Filed 2–5–93; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 58, No. 24
Monday, February 8, 1993

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-61-AD]

Airworthiness Directives; Cessna T210 Series Airplanes Modified by Supplemental Type Certificate SA2231CE or Supplemental Type Certificate SA3203NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Cessna T210 series airplanes equipped with a turbocharged Continental TSIO-520R engine and intercooler installation in accordance with Supplemental Type Certificate (STC) SA2231CE or STC SA3203NM. The proposed action would require inspecting the air induction hose to determine whether a Gates hose (part number 20987 or 21370) is installed, and replacing any such hose with The Aircraftsman hose (part number MW1118), which is designed to handle the high turbocharger exit air temperature. One of the affected airplanes lost engine power at high altitude because hot air from the turbocharger caused the Gates air induction hose to split. The actions specified by the proposed AD are intended to prevent air induction hose failure, which could result in loss of engine power.

DATES: Comments must be received on or before April 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-61-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information that relates to the proposed AD may be examined at the Rules Docket at the address above. Parts needed as a result of the proposed AD may be obtained from The Aircraftsman, 7000 Merrill Avenue, Hangar/Box P100, Chino, California 91710; Telephone (909) 393-0884.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806; Telephone (310) 988-5265; Facsimile (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the 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 that summarizes 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 No. 92-CE-61-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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-61-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Supplemental Type Certificate (STC) SA2231CE and STC SA3203NM incorporate The Aircraftsman intercooler installation on Cessna Models T210K, T210L, T210M, and T210N airplanes equipped with a turbocharged Continental TSIO-520R engine. Air induction hoses, Gates part number (P/N) 20987 and P/N 21370, were approved as part of these STC approvals. These hoses route the exit (hot) air from the turbocharger to the intercooler. The maximum heat resistant temperature of these hoses is 257 degrees Fahrenheit, and the hose is not designed to handle air temperatures exiting the aircraft turbocharger. One of the affected airplanes lost engine power at high altitude because hot air from the turbocharger caused the Gates air induction hose to split.

The intercooler installation also allows the use of The Aircraftsman induction hose, P/N MW1118, which is designed to handle the high turbocharger exit air temperatures.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent air induction hose failure, which could result in loss of engine power.

Since the condition described is likely to exist or develop in other Cessna T210 series airplanes of the same type design that are equipped with a turbocharged Continental TSIO-520R engine and intercooler installation in accordance with STC SA2231CE or STC SA3203NM, the proposed AD would require inspecting the air induction hose to determine whether a Gates hose (part number 20987 or 21370) is installed, and replacing any such hose with The Aircraftsman hose (part number MW1118), which is designed to handle the high turbocharger exit air temperature.

The FAA estimates that 390 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour Parts cost approximately $135 per airplane. Based on these figures, the total cost impact of

the proposed AD on U.S. operators is estimated to be $74,100.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

Cessna Aircraft Company: Docket No. 92-CE-61-AD.

Applicability: The following model airplanes (all serial numbers) equipped with a Continental TSIO-520R engine and intercooler installation in accordance with the applicable supplemental type certificate (STC), certificated in any category:

Model	Modified by STC
T210K	SA2231CE
T210L	SA2231CE
T210M	SA3203NM
T210N	SA3203NM

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent air induction hose failure, which could result in loss of engine power, accomplish the following:

(a) Visually inspect between the turbocharger and intercooler to determine whether a Gates air induction hose, part number (P/N) 20987 or P/N 21370, is installed. If a Gates hose is installed, prior to further flight, accomplish the following: (1) Loosen the two AN737-TW clamps and remove the Gates hose. (2) Install The Aircraftsman hose, P/N MW1118, and tighten the two AN737-TW clamps. (b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished. (c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) All persons affected by this directive may examine any information referred to herein upon request to the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Parts needed as a result of this action may be obtained from The Aircraftsman, 7000 Merrill Avenue, Hangar/Box P100, Chino, California 91710.

Issued in Kansas City, Missouri, on February 1, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-2983 Filed 2-5-93; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 92-NM-242-AD]

Airworthiness Directives; Dassault Aviation Model Mystere-Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Aviation Model Mystere-Falcon 900 series airplanes. This proposal would require modification of the windshield support structure-to-aft window frame attachment at frame 4. This proposal is prompted by the results of fatigue tests, which revealed cracking in the windshield support structure at the aft window frame attachment points. The actions specified by the proposed AD are intended to prevent fatigue cracking, which could lead to reduced structural integrity of the windshield support structure and potential loss of the windshield.

DATES: Comments must be received by April 5, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-242-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 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.

FOR FURTHER INFORMATION CONTACT: Mr. 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:

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 92-NM-242-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. 92-NM-242-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Génerale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Dassault Aviation Model Mystere-Falcon 900 series airplanes. The DGAC advises that during fatigue testing on a Dassault Aviation Model Mystere-Falcon 900 series airplane, cracks were found in the windshield support structure-to-aft window frame attachment points. These cracks were due to the deformation of the structural elements within this area. Fatigue cracking in this area, if not detected and corrected, could lead to reduced structural integrity of the windshield support structure and potential loss of the windshield.

Dassault Aviation has issued Service Bulletin F900-53-12 (F900-91) and Appendix 1 to that service bulletin, both dated July 8, 1992, which describe procedures for accomplishing Modification F900 M613. This modification entails installing a doubler on the window frame and the windshield support structure at frame 4; installing shims at the bottom of the window frame recesses; and changing the type of fasteners. Accomplishing this modification would reduce deformation between the support structure and the window frame by mechanically reinforcing the attachment zone. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 92-139-011(B), dated July 8, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is 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 this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. 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 an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the windshield support structure-to-aft window frame attachment at frame 4. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 45 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $24,750, or $2,475 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 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:

Dassault Aviation: Docket 92-NM-242-AD.

Applicability: Model Mystere-Falcon 900 series airplanes; serial numbers 1 through 9, inclusive; and 11 through 20, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the windshield support structure and potential loss of the windshield, accomplish the following:

(a) For airplane serial number 1: Prior to the accumulation of 3,750 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the windshield support structure-to-aft window frame attachment at frame 4 on the right-hand and left-hand sides, in accordance with Dassault Aviation Service Bulletin F900-53-12 (F900-91) and Appendix 1 to that service bulletin, both dated July 8, 1992.

(b) For airplanes having serial numbers 2 through 9, inclusive, and 11 through 20, inclusive: Modify the windshield support structure-to-aft window frame attachment at frame 4 on the right-hand and left-hand sides, in accordance with Dassault Aviation Service Bulletin F900-53-12 (F900-91) and Appendix 1 to that service bulletin, both dated July 8, 1992; and at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to the accumulation of 3,750 total landings, or within 6 years since date of manufacture, whichever occurs first.

(2) Within 6 months after the effective date of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the 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.

Issued in Renton, Washington, on February 2, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-2868 Filed 2-8-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-19-92]

RIN 1545-AR15

Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed Income Tax Regulations that prevent a corporate partner from avoiding corporate-level gain through transactions with a partnership involving equity interests of the partner.

DATES: The public hearing originally scheduled for Tuesday, February 16, 1993, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Internal Revenue Code of 1986, as amended. A notice of proposed rulemaking and public hearing appearing in the **Federal Register** for Tuesday, December 29, 1992 (57 FR 61852), announced that the public hearing on proposed amendments under section 42 of the Internal Revenue Code of 1986 would be held on Tuesday, February 16, 1993, beginning at 10 a.m., in the IRS Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Tuesday February 16, 1993, has been cancelled.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93-2985 Filed 2-5-93; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 26 and 301

[PS-73-88; PS-32-90]

RIN 1545-AL75; 1545-AO89

Generation-Skipping Transfer Tax; Extension of Time for Public Comments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of extension of time for public comments.

SUMMARY: This document provides notice of an extension of time for submitting public comments concerning the notices of proposed rulemaking relating to the generation-skipping transfer tax imposed under chapter 13 of the Internal Revenue Code. The extended deadline for submission of comments is March 31, 1993.

DATES: Written comments must be received by March 31, 1993.

ADDRESSES: Submissions should be sent to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS-73-88; PS-32-90], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John B. Franklin, 202-622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On Thursday, December 24, 1992, the Internal Revenue Service published in the **Federal Register**, a notice of proposed rulemaking (PS-32-90) (57 FR 61353) relating to the liability for the generation-skipping transfer tax when a direct skip occurs at death with respect to property held in a trust arrangement, and a notice of proposed rulemaking (PS-73-88) (57 FR 61356) relating to the generation-skipping transfer tax imposed under chapter 13 of the Internal Revenue Code. These proposed regulations stated that the public comments were to be received by February 1, 1993. This document extends the period for the submission of comments on the proposed regulations to March 31, 1993.

Dale D. Goode,

Federal Register Liaison Officer, Ass't Chief Counsel (Corporate).

[FR Doc. 93-2688 Filed 2-5-93; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 11-93-01]

Drawbridge Operation Regulations; Eureka Slough, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the North coast railroad, the Coast Guard proposes a change to the regulation for the North Coast Railroad Bridge crossing over Eureka Slough, mile 0.3 in Eureka, California. The change would eliminate openings of the draw for the passage of vessels. The bridge is presently required to open on 24 hours advance notice, but has not opened for vessels for at least eight years. This action should relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before March 25, 1993.

ADDRESSES: Comments may be mailed to Commander (oan-br), Eleventh Coast Guard District, Bldg. 10 room 214, Coast Guard Island, Alameda, CA 94501-5100, or may be delivered to room 214 at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (510) 437-3514. Commander (oan-br) maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Bldg. 10 room 214, Coast Guard Island Alameda.

FOR FURTHER INFORMATION CONTACT: Jerry P. Olmes, Bridge Administrator, Eleventh Coast Guard District at (510) 437-3514.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 11-93-01) and the specific section

of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (oan-br) at the address under "ADDRESSES." The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Jerry P. Olmes, Project Officer, and Lieutenant Commander Craig M. Juckniess, Project Attorney, Eleventh Coast Guard District Legal Office.

Background and Purpose

In early 1985, the Eureka Southern Railroad purchased the bridge and rail line from the Northwestern Pacific Railroad. Since that date there have been no requests to open the railroad bridge. The North Coast Railroad, successor to the Eureka Southern Railroad, now requests to be relieved of the burden of maintaining the bridge as a movable bridge.

Discussion of Proposed Amendment

The proposed amendment would eliminate the requirement that the bridge open for the passage of vessels.

The railroad bridge crosses Eureka Slough approximately 0.3 miles upstream of the slough's confluence with Arcata Bay, the northerly arm of Humboldt Bay. Historically, the slough was used for hauling logs to mills at Eureka. Although there has been no log hauling on the slough for many years, the slough is used occasionally by small motorized fishing boats, and until recently, a few commercial fishing boats moored at the mouth of the slough. No vessel requests for opening the draw have been received since 1985. There are no navigation improvements upstream of the railroad bridge, and all other bridges on the waterway are fixed bridges. The railroad bridge is quite low. It has vertical clearances of 4 ft. above Mean High Water and 11 ft. above Mean Lower Low Water. These clearances are more restrictive than vertical clearances of the U.S. Highway 101 bridge, 1,000 feet upstream of the railroad bridge, which provides 16 ft. above Mean High Water and 22.7 ft. above Mean Lower Low Water.

Economic Assessment and Certification

This proposed rulemaking is not major under Executive Order 12291 on Federal Regulation and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

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

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

Subpart B—Specific Requirements

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.155 is revised to read as follows:

§ 117.115 Eureka Slough.

The draw of the North Coast Railroad bridge, mile 0.3 at Eureka, need not be opened for the passage of vessels.

Dated: January 25, 1993.

M.E. Gilbert,

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

[FR Doc. 93–2959 Filed 2–5–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD 11–92–10]

Drawbridge Operation Regulations Mokelumne River, California

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the California Department of Transportation (CALTRANS), the Coast Guard proposes to establish a drawbridge operation regulation for the Mokelumne River Bridge. This highway 12 drawbridge crosses the Mokelumne River at mile (3.0) east of Isleton, California. The regulation will limit openings for recreational vessels to three times an hour during peak highway traffic periods on weekends and holidays from May through October. This proposal is being made because vehicular traffic at peak periods has increased. This action should accommodate the needs of Highway 12 traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before March 25, 1993.

ADDRESSES: Comments may be mailed to Commander (oan-br), Eleventh Coast Guard District, Building 10, Room 214, Coast Guard Island, Alameda, CA 94501–5100, or be delivered to the same address between 7 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (510) 437–3514.

FOR FURTHER INFORMATION CONTACT: Susan Worden, Bridge Administrator, Bridge Section, Aids to Navigation Branch at (510) 437–3514.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and this rulemaking (CGD 11–92–10); and give reason(s) for concurrence and/or recommend changes to the proposal. The Coast Guard requests that multipage comments and attachments be submitted unbound, or if bound that a second copy be submitted. Those desiring acknowledged receipt may enclose a self-addressed stamped envelope or post card.

The Coast Guard solicited comments during the test period in 1988 and during the summers of 1990–1992. We received seven comments; four supporting the regulation, and three opposing it. Those comments previously submitted will be entered into the record for this rulemaking and given careful consideration in the Coast Guard decision.

The Commander, Eleventh Coast Guard District will also evaluate all communications received during the comment period and determine a course of final action on this proposal. The proposed regulations may be changed in light of the comments received.

Drafting Information

The principal persons involved in drafting this document are Susan Worden, Project Officer, and Lieutenant Commander Craig M. Juckniess, Project Attorney, Eleventh Coast Guard District Legal Office.

Backgound and Purpose

Highway 12 is a major east-west highway in the Sacramento-San Joaquin River Delta in northern California. It crosses three major recreational waterways over drawbridges: The Sacramento River at Rio Vista, the Mokelumne River east of Isleton, and Little Potato Slough at Terminous. In the vicinity of the Rio Vista Bridge, the highway volume is 1,100 vehicles per hour on holiday weekends according to a 1988 CALTRANS survey. Traffic backups on this two land road are sometimes 8 miles long. Drawbridge openings exacerbate highway traffic congestion. The other two drawbridges on Highway 12 provide 18 and 35 feet clearance over Mean High Water (MHW) in the closed position. They accommodate most recreational boats without a need for bridge openings. The Mokelumne River Bridge is the lowest drawbridge on Highway 12, with 7 feet vertical clearance over MHW in the closed position. This bridge must open for most recreational boats transiting this waterway, which is one of the busiest waterways in the Delta.

Discussion of Proposed Amendments

The present regulation requires the Mokelumne River Bridge to open on call from 6 a.m. until 10 p.m. during the summer. The proposed regulation will limit openings for recreational vessels to three times an hour during peak highway traffic periods on summer weekends and holidays. Those peak periods are from 10 a.m. to 2 p.m. Saturdays and from 11 a.m. to 6 p.m. Sundays and holidays. Openings for commercial vessels are infrequent on weekends and holidays, and because it is less safe for larger commercial vessels to stop or maneuver in shallower channels, they are excluded from the regulation and will be provided openings upon signal.

The temporary regulation was tested in August-September of 1988, and implemented on a temporary basis in 1990, 1991 and 1992. During those previous trials, it reduced highway congestion without adverse effect on navigation. Comments were solicited during the trials, and in 1988, the Coast Guard received two supporting letters from a business firm and a recreational boat operator and one opposing letter from a yacht club. In 1990, the Coast Guard received two supporting letters, one from the same business firm and one from another business firm, and one opposing letter from a marina operator. No comments were received in 1991. In 1992 we received one opposing letter from a recreational boat operator. The yacht club letter expressed concern about the possible hazard to vessels waiting for openings during adverse weather conditions or congestion. The marina operator expressed concern for the safety of vessels using his fuel dock near the bridge. The recreational boat operator preferred 10–15 minutes intervals instead of 20 minute intervals between openings because of possible vessel congestion and maneuvering problems. Coast Guard staff observed bridge operation through peak hours and concluded that there is adequate room for recreational vessels to safely await bridge openings, and, that adjacent levees adequately shelter waiting vessels from the strong afternoon winds. The regulation had no noticeable effect on vessels' safe maneuvering or vessels using nearby fuel docks while waiting for bridge openings. Under the permanent regulation, during peak traffic periods, the bridge was often open to vessel traffic for more than 30 minutes each hour and some accumulated highway traffic did not clear the bridge between openings. The proposed regulation did allow all waiting vehicles to clear the bridge between bridge openings and provided a smoother flow of overland traffic.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Vehicular traffic flow will be enhanced and no vessels will be prevented from using the waterway. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

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

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rulemking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed with this docket and is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

The Coast Guard proposes to amend part 117 of title 33 Code of the Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

Subpart B—Specific Requirements

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.175 is amended by revising paragraph (a) to read as follows:

§ 117.175 Mokelumne River.

(a) The draw of the California Department of Transportation highway bridge, Mokelumne River mile 3.0 shall open upon signal as follows:

(1) From 1 November through 30 April from 9 a.m. to 5 p.m.

(2) From 1 May through 31 October from 6 a.m. to 10 p.m., except that during the following periods the draw need only open for recreational vessels on the hour, 20 minutes past the hour, and 40 minutes past the hour:

Saturdays—10 a.m. until 2 p.m.
Sundays—11 a.m. until 6 p.m.
Memorial Day; 4th of July; and Labor Day—11 a.m. until 6 p.m.

(3) At all other times the draw shall open on signal if at least 4 hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

(4) Emergency vessels of the United States, state or commercial vessels engaged in rescue or emergency salvage operations, and vessels in distress shall be passed as soon as possible but no later than one hour after notice is given.

* * * * *

Dated: January 25, 1993.

M.E. Gilbert,

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

[FR Doc. 93–2960 Filed 2–5–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Baltimore, MD, Regulation 93–05–03]

Safety Zone Regulation: U.S. Naval Academy, Annapolis, MD, on the Severn River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is considering a proposal to establish a safety zone for the purpose of the 14th Safety at Sea Seminar at Annapolis Maryland, for the U.S. Naval Academy Sailing Squadron. The seminar will consist of a pyrotechnic display; a helicopter rescue and a sail training craft maneuver demonstration. The seminar will be held between the Route 450 Old Severn River bridge, south to Triton Point and Worthington Basin at the U.S. Naval Marine Engineering Laboratory on the Severn River. The safety zone is necessary to control small craft and commercial vessel traffic and to provide for the safety of life and property U.S. navigable waters from the hazards associated with the seminar. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: Comments must be received on or before March 10, 1993.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Marine Safety Office Baltimore, Custom House, 40 S. Gay Street, Baltimore, Maryland 21202–0004. Comments may also be hand delivered to the above address. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in room 343. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Mark Williams at U.S. Coast Guard Marine Safety Office, 40 S. Gay Street, Baltimore, Maryland, 21202–0004, (410) 962–5104.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data and arguments. Persons submitting comments should include their names and addresses, identify this notice (93–05–03) and the specific section of the proposal to which their comments apply, as well as give reasons for each comment.

The regulation may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade Mark R. Williams, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Commander Keith B. Letourneau, project attorney Fifth Coast Guard District Legal Staff.

Background and Purpose

On December 1, 1992, an application was received by U.S. Coast Guard Group Baltimore from the U.S. Naval Academy Sailing Squadron, requesting a safety zone while the 14th Safety at Sea Seminar is held at the U.S. Naval Academy, Annapolis Maryland, to take place on April 3, 1993 and April 4, 1993. As part of their application, the U.S. Naval Academy Sailing Squadron requested the Coast Guard provide control of spectator and commercial traffic during the seminar.

Discussion of Proposed Regulation

The 14th Safety at Sea Seminar will be conducted within the area bounded by lines drawn from the Route 450 Old Severn River Bridge, south to Triton Point and Worthington Basin at the U.S. Naval Marine Engineering Laboratory, in the Severn River, Maryland. This safety zone will encompass an area from the Route 450 old Severn River Bridge located at latitude 38 degrees 59 minutes North, longitude 76 degrees 29 minutes West, south to Triton Point, located at latitude 38 degrees 58 minutes North, longitude 76 degrees 28 minutes West, thence across to Worthington Basin, located at latitude 38 degrees 59 minutes North, longitude 76 degrees 28 minutes West, and finally back to the Route 450 old Severn River Bridge.

This regulation is necessary to ensure the safety of participants, spectator craft and to provide for the safety of life and property on U.S. navigable waters during the event. Since the main channel will not be closed for an extended period, commercial traffic should not be severely disrupted.

This regulation is issued under 33 U.S.C. 1225 & 1231 as set out in the authority citation for all of part 165.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be minimal, therefore a full regulatory evaluation is unnecessary.

The Coast Guard also considered the impact of this regulation on small entities and concluded that such impact is expected to be minimal. Therefore the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section § 165.T5104, is added to read as follows:

§ 165.T5104 Safety Zone: U.S. Naval Academy, Annapolis MD, Severn River.

(a) *Location.* The following area is a safety zone: From the Route 450 Old Severn River Bridge, located at Latitude 38 degrees 59 minutes North, Longitude 76 degrees 29 minutes West, south, to Triton Point, located at Latitude 38 degrees 58 minutes 53 seconds North, Longitude 76 degrees 28 minutes West, across to Worthington Basin, located at Latitude 38 degrees 59 minutes North, Longitude 76 degrees 28 minutes West, and north to the Route 450 Old Severn River Bridge located at Latitude 38 degrees 59 minutes North, Longitude 76 degrees 29 minutes West. The safety zone includes the area inside of lines drawn between these four points.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf. The following officers have or will be designated by the Captain of the Port: the Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office Baltimore, Maryland.

(c) *Local regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(1) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(2) The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5104.

(3) The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 16 and 82A.

(4) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(d) *Effective date.* This regulation is effective from 12 p.m. April 3, 1993, to 1:30 p.m. April 3, 1993, and again on April 4, 1993, encompassing the same area description and running from 12 p.m. until 1:30 p.m., unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: February 2, 1993.

R. L. Edmiston,

Captain, U. S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 93–2961 Filed 2–5–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL 4592–1]

Public Meeting of the Hazardous Waste Manifest Rulemaking Committee

AGENCY: Environmental Protection Agency.

ACTION: Public meeting.

SUMMARY: As required by the Federal Advisory Committee Act, we are giving notice of two public meetings of the Hazardous Waste Manifest Rulemaking Committee. The meetings are open to the public without advance registration.

The purpose of the meetings is to continue to work on revising the uniform national hazardous waste manifest form and rule.

DATES: The Committee meetings will be held on February 25, 1993 from 10:30 a.m. to 6 p.m. and February 26, 1993 from 9 a.m. to 4 p.m. The above dates reflect a change in dates from the ones mentioned in the December **Federal Register** notice. The Committee will also meet on March 29, 1993 from 10 a.m. to 6 p.m. and March 30, 1993 from 9 a.m. to 4 p.m.

ADDRESSES: Location of both the February and March meetings will be the National Governor's Association, Hall of States, 444 North Capitol St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Rick Weslund, Regulatory Management Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–2745. Persons needing further information on procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–5495, or Committee's facilitator, Suzanne Orenstein, Resolve, 1250 24th Street, NW., Suite 500, Washington, DC 20037, (202) 778–9533.

Dated: February 2, 1993.

Deborah Dalton,

Deputy Director, EPA Consensus and Dispute Resolution Program, Office of Regulatory Management and Evaluation.

[FR Doc. 93–2957 Filed 2–5–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 93–03]

Filing of Tariffs and Service Contracts; Implementation of Section 502 of Public Law 102–582

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") is proposing to amend its regulations governing the filing of tariffs and service contracts in order to implement section 502 of Public Law 102–582, which requires certain tariff data to be electronically filed into the Commission's Automated Tariff Filing and Information System and requires this data to be made available without restriction to the public. Additionally, a user-agreement approach is proposed to implement the new law's requirement that the Commission impose a per-minute fee for secondary (remote) electronic access to the tariff data.

DATES: Written comments in response to this notice (original and 15 copies) must submitted (actually received at the Commission) by March 10, 1993.

ADDRESSES: Send written comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Deputy Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

SUPPLEMENTARY INFORMATION: On November 2, 1992, the President signed the "High Seas Driftnet Fisheries Enforcement Act," Public Law 102–582. Section 502 of this Act ("Section 502"

at 46 U.S.C. app. 1707a) relates to the Federal Maritime Commission's ("Commission" or "FMC") own "Automated Tariff Filing and Information System" ("ATFI"). In order to implement Section 502, this proceeding proposes to amend the appropriate provisions of 46 CFR part 514, *Tariffs and Service Contracts.*

Tariff Form and Availability

Subsection (b)(1) of Section 502 provides that notwithstanding any other law, each common carrier and conference shall, in accordance with subsection (c), file electronically with the Commission all tariffs, and all essential terms of service contracts, required to be filed by that common carrier or conference under the Shipping Act of 1984 (46 App. U.S.C. 1701 et seq.), the Shipping Act, 1916 (46 App. U.S.C. 801 et seq.), and the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.).

The filing requirement of Section 502 does not include marine-terminal -operator tariffs, which are currently required to be filed pursuant to the Shipping Act, 1916, 46 U.S.C. app. 801, *et seq.* and the Shipping Act of 1984, 46 U.S.C. app. 1701, *et seq.*, and implementing provisions. These filing requirements will, therefore, be retained in part 514, even though the implementation of Section 502's user charges will reflect this omission. See the discussion under: "Fees; Enforcement."

Subsection (b)(2) provides that the Commission shall make available electronically to any person, without time, quantity, or other limitation, both at the Commission headquarters and through appropriate access from remote terminals—

All tariff information, and all essential terms of service contracts, filed in the Commission's Automated Tariff Filing and Information System database; and

All tariff information in the System enhanced electronically by the Commission at any time.

Additionally, subsection (i) of section 502 repeals the remote retrieval restrictions of section 2 of the Act of August 16, 1989 (46 App. U.S.C. 1111c).[1]

Accordingly, as required by section 502, the "remote-retrieval restriction" of automatic logoff from the system after a certain period of time (e.g., 30 minutes), will be removed from §§ 514.12(a)(1) and 514.20(c)(2)(ii). At the same time, however, reasonable system accommodations of access must be retained, such as, the 10-minute logoff for inactivity under § 514.20(c)(2)(i); prohibition of access when the system is down; and reasonable, temporary procedures to provide fair and equal access by more retrievers than the system can handle during severe and unusual surges.

Filing Schedule

Subsection (c) of Section 502 provides that new tariffs and new essential terms of service contracts shall be filed electronically not later than July 1, 1992. All other tariffs, amendments to tariffs, and essential terms of service contracts shall be filed not later than September 1, 1992.

When Section 502 was signed on November 2, 1992, both deadline dates in section 502(c), i.e., July 1, 1992, and September 1, 1992, had long since passed. By Supplemental Report No. 2 and Notice of August 12, 1992, in Docket No. 90–23, the Commission had established a phase-in schedule, which continued during most of 1993, for the required electronic filing of tariff data. Both the Commission and the industry needed and relied upon this implementation plan for the orderly electronic filing and acceptance of tariff data into ATFI. The industry's need for and reliance upon the previous schedule became immediately apparent in comments to the proposed rule in Docket No. 90–23; were verified through direct contact with industry, such as in an oral comment session with the Commission; and were later corroborated again through, *inter alia,* the comments submitted by ANERA and IAFC in that proceeding.

For this reason, the Commission, on December 14, 1992, issued a Notice ("December Notice") to apprise the public of when the Commission would be capable of accepting electronically-filed tariff data. See the **Federal Register** of December 17, 1992, 57 FR 60000. In developing the December Notice, the Commission took into consideration the terms of Section 502, as well as what is actually possible with regard to implementation by both the Commission and the industry, which has to file the tariff data. In pertinent part, the December Notice provides:

Notwithstanding the language of the statute, February 22, 1993, is the earliest possible date the Federal Maritime Commission * * * will be prepared to accept electronically filed tariff data. In Supplemental Report No. 3 and Notice * * * in Docket No. 90–23, Automated Tariff Filing and Information System (ATFI), the Commission today has published a revised phase-in schedule for the mandatory electronic filing/conversion of tariff data into ATFI. That schedule establishes, according to specified trade areas, the dates during 1993 by which carriers and conferences must convert and file their tariffs electronically. As indicated in that Report, paper tariffs covering the described trade areas which are not converted by the prescribed "complete" date, will be subject to cancellation by order of the Commission in a show cause proceeding. As additionally indicated in that Report, filers must notify the ATFI Hot Line at (703) 883–8350 ten (10) days before beginning to convert a full tariff.

Under the implementation plan developed separately by the Commission, all effective tariff data required to be filed by the Shipping Acts will eventually, and as soon as possible, be electronically filed into and electronically accessible on the ATFI system.

Fees; Enforcement

Subsections (d) and (e) of Section 502 provide that the Commission shall charge, beginning July 1 of the fiscal year 1992 and in fiscal years 1993, 1994, and 1995—

a fee of 46 cents for each minute of remote computer access by any individual of the information available electronically under this section; and for electronic copies of the Automated Tariff Filing and Information System database (in bulk), or any portion of the database, a fee reflecting the cost of providing those copies, including the cost of duplication, distribution, and user-dedicated equipment; and for a person operating or maintaining information in a database that has multiple tariff or service contract information, obtained directly or indirectly from the Commission, a fee of 46 cents for each minute the database is subsequently accessed by computer by any individual. A Federal agency is exempt from paying a fee under this subsection. The Commission shall use systems controls or other appropriate methods to enforce subsection (d).

[1] Section 2 of the Act of August 16, 1989 (46 App. U.S.C. 1111c), provided that the Federal Maritime Commission shall require that complete and updated electronic copies of the Automated Tariff Filing and Information data base are made available (in bulk) in a timely and nondiscriminatory fashion, and the Commission shall assess reasonable fees for this service consistent with section 552 of title 5, United States Code; the Commission shall impose reasonable controls on the system to limit remote access usage by any one person; and the Commission shall provide that any information from the Automated Tariff Filing and Information System that is made available to the public may be used, resold, or disseminated by any person without restriction and without payment of additional fees or royalties.

The Commission has already indicated in the analysis of subsection (c) that it cannot implement retroactive dates. Thus, charging a fee beginning on July 1, 1992, for electronic access to data that cannot be filed by July 1, 1992, is impossible. Again, the Commission will do what it can, that is, establish section 502's user fees through normal regulatory mechanisms; in this case, rulemaking.

Except for the secondary access user charge (a fee for each minute the database is subsequently accessed under subsection (d)(1)(B)(ii)), section 502 provides substantially the same user charges as §§ 514.21(g) and 514.21(j). To implement section 502, therefore, we propose changing the "50 cents per minute of connect time" in § 514.21(g) to "46 cents per minute connect time," as provided in subsection (d)(1)(A) of section 502.

For the purchase of database tapes under subsection (d)(1)(B)(i) of section 502, there appears to be no need to change the per-tape charge in § 514.21(j), since it is based on the "marginal cost of distribution." The language in section 502, providing for a fee reflecting the cost of providing those copies, including the cost of duplication, distribution, and dedicated equipment will be added to § 514.21(j) for added clarification. The Commission will continue with its plans to make available the full ATFI database tapes, rather than attempt to break the database down into logical, discrete portions (e.g., foreign, domestic, etc.) for sale to the public. (Periodic updates of just those portions of the entire database which are being revised still are being planned for distribution.)

The secondary use fee in section 502(d)(1)(B)(ii), heretofore not intended in the ATFI project, apparently is required from anyone who electronically accesses ATFI data from a private entity which has obtained the data from ATFI. This is 46 cents for each minute of that access, payable to the Commission. Additionally, secondary use under section 502 also would include access by any employee of the individual who obtained the electronic data, as well as the individual's own subsequent electronic inspection of the data. Because the section 502 user fees do not apply to printed data (on paper), subsequent inspection of screen-printed data on paper would not require a per-minute fee. The language of section 502 on this subject is being added to § 514.21(g).

The Commission intends to use system controls, as referred to in subsection (e) of section 502, to enforce the collection of user fees for all items or services listed in § 514.21. Secondary or subsequent use of ATFI data on other terminals by other individuals, however, cannot be readily monitored and reported by ATFI. Similarly, an "honors-system" approach, whereby every user would be responsible for keeping track of his/her own usage and remitting the appropriate use charge to the Commission, would not appear to be effective, although commenters may be able to propose viable alternatives.

Accordingly, it now appears that the most appropriate way for the Commission to enforce collection of the secondary use fee is through the primary user, i.e., anyone who obtains the data from ATFI and resells it to others. An ATFI User Agreement is proposed for this purpose under new paragraph (l)(3) of § 514.21, and is set forth in full at new Exhibit 2 to part 514. Under the user-agreement approach, the person most able to monitor the use of the data for user-fee purposes is required to do so. The Commission is advised that the user-agreement approach requires that the data covered by the user agreement be the property of the Commission, as recited in section A.3 (Rights in Data) of the user agreement. The public is especially invited to comment on this aspect of the user agreement.

As required under subsection (d)(2) of section 502, Federal agencies will be exempt from paying the access fees under new § 514.21(l)(1). As mentioned in the analysis under subsection (b)(1) of section 502, marine terminal tariff data will be exempt from the secondary use fee under new paragraph (l)(2) of § 514.21.

Penalties

Subsection (f) of section 502 provides that a person failing to pay a fee established under subsection (d) is liable to the United States Government for a civil penalty of not more than $5,000 for each violation. A person that willfully fails to pay a fee established under subsection (d) commits a class A misdemeanor.

Section 502 does not authorize the Commission to assess or collect these penalties. Accordingly, part 514 will merely include reference to these penalties in paragraphs (g) and (j) of § 514.21.

Automatic Filing Implementation

Subsection (g)(1) of section 502 provides that software that provides for the electronic filing of data in the Automated Tariff Filing and Information System shall be submitted to the Commission for certification. Not later than fourteen days after a person submits software to the Commission for certification, the Commission shall certify the software if it provides for the electronic filing of data; and publish in the **Federal Register** notice of that certification.

Certification of batch filing capability, which includes the certification of any software associated with an applicant's certification, is already provided for in § 514.8(l) and no rule change appears to be necessary. The user fee for batch filing certification under § 514.21(e), is retained unchanged.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the proposed rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291, because it will not result in:

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

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions;

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that this rule not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. This is because firms that have traditionally used third party vendors or directly contacted carriers for rate information will most likely continue to use the same sources. Furthermore, the Commission believes that these entities' use of third party vendors will not produce the same increased costs as use of ATFI because these vendors will be able to establish tariff databases independent of ATFI, thereby drawing users away from ATFI and into less expensive arrangements. Any residual ATFI usage on the part of small entities will be limited and will not involve a substantial number of small entities. However, even if third party vendors were not to establish databases independent of ATFI, the Commission believes that the proposed rule will still not have a significant economic impact on a substantial number of small entities because the proposed rule is the least impact alternative on small entities

available to the Commission under Public Law 102–582.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), as amended. Public reporting burden for this collection of information is estimated to take 25 hours per month, or 300 hours per year, per respondent. This collection of information includes the time for reviewing instructions and contract clauses, completing and reviewing the collection of information, and collecting and reporting receipts. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 46 CFR Part 514

Barges, Cargo, Cargo vessels, Exports, Fees and user charges, Freight, Harbors, Imports, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and record keeping requirements, Surety bonds, Trucks, Water carriers, Waterfront facilities, Water transportation.

By the Commission.

Joseph C. Polking,

Secretary.

Therefore, for the reasons set forth in the preamble, and pursuant to 5 U.S.C. 552 and 553; U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; section 2(b) of Public Law 101–92, and section 502 of Public Law 102–582; part 514 of title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 514—TARIFFS AND SERVICE CONTRACTS

1. The authority citation for part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. Section 514.12(a)(1) introductory text is revised to read as follows:

§ 514.12 Governing and general reference tariffs.

* * * * *

(a) * * *

(1) *Types.* Due to ATFI's "linkage" design feature, whereby tariff items at rules level (location groups, inland rate tables and algorithms in rules), can be electronically referenced and made applicable from one tariff (governing) to another (governed), a filer may create and use only the following types of governing tariffs, or combinations thereof, which shall accompany governed tariffs in the ATFI electronic format:

* * * * *

3. Section 514.20(c)(2) is revised to read as follows:

§ 514.20 Retrieval.

* * * * *

(c) * * *

(1) * * *

(2) *Automatic logoff.* All retrievers will be automatically logged off after 10 minutes of inactivity.

* * * * *

4. In § 514.21, paragraphs (g) and (j) are revised, and a new paragraph (l) is added, to read as follows.

§ 514.21 User charges.

* * * * *

(g) *Remote electronic retrieval* (§ 514.20(c)(3)). (1) The fees for remote electronic access to ATFI electronic data are:

(i) A fee of 46 cents for each minute of remote computer access directly to the ATFI database by any individual; and

(ii) For a person operating or maintaining information in a database that has multiple tariff or service contract information, obtained directly or indirectly from the Commission, a fee of 46 cents for each minute that database is subsequently accessed by computer by any individual.

(2) Section 502 of Public Law 102–582 (46 U.S.C. app. 1707a(f)) provides for a civil penalty of not more than $5,000 for each violation of failure to pay a fee under this section, and that a person that willfully fails to pay a fee under this section commits a class A misdemeanor.

* * * * *

(j) *Database tapes* (§ 514.20(d)). (1) The fees for subscriber tapes, similar to other fees in this section, reflect the cost of providing those copies, including the cost of duplication, distribution, and user-dedicated equipment, and are:

(i) Initial set of full database tapes: $300.

(ii) Daily updates: $25 each.

(iii) Weekly updates: $50 each.

(iv) Monthly updates: $100 each.

(2) Section 502 of Public Law 102–582 (46 U.S.C. app. 1707a(f)) provides for a civil penalty of not more than $5,000 for each violation of failure to pay a fee under this section, and that a person that willfully fails to pay a fee under this section commits a class A misdemeanor.

* * * * *

(l) *Exceptions and enforcement.* (1) A Federal agency is exempt from paying a fee under paragraphs (g) and (j) of this section.

(2) Marine terminal tariff data is not subject to a secondary use fee under paragraph (g)(2) of this section.

(3) In addition to the requirement to promptly pay user charges for all services/products received under this section, every individual desiring to purchase any tape under paragraphs (j) or (k) of this section must first execute the ATFI User Agreement set forth as Exhibit 2 to Part 514 and comply with all provisions thereof, including the submission of a model of its charging system under section C.5 of that agreement.

5. Exhibit 2 to Part 514, the ATFI User Agreement, is added to read as follows:

Exhibit 2 to Part 514

Federal Maritime Commission Automated Tariff Filing and Information System ("ATFI") User Agreement

AGREEMENT entered into between the FEDERAL MARITIME COMMISSION (hereinafter "FMC"), pursuant to 46 U.S.C. app. 1707a, and:

Firm Name: _____

Address: _____

_____

_____

Contact: _____

Telephone: _____

(hereinafter "User").

A. Use Provisions

1. Use. During the term of this Agreement, subject to the terms and conditions hereof, FMC grants User the non-exclusive, non-transferable, limited right to access, through magnetic tape media, all tariff information and all essential terms of service contracts ("data") filed in the FMC's Automated Tariff Filing and Information System database ("ATFI"). FMC shall make such magnetic tape(s) available to User pursuant to 46 CFR § 514.21(k), and the schedule(s) published under 46 CFR §§ 514.21(j)(1) through 514.21(j)(4).

2. Limitation of Use. No part of the ATFI data may be copied, downloaded, published, transmitted, transferred or otherwise used, in any form or by any means, without prior written permission from the FMC, except as follows:

(a) User may access ATFI data contained in the magnetic tapes for its own use subject to the charges set forth in Part C.

(b) User may permit other persons to access electronically the data in its possession and shall pay the FMC user charges set forth in Part C, for such use by others.

(c) By use of the "Print Screen" function, User may print the data obtained electronically from ATFI, and may permit others who electronically access the data in its possession to print the data only through the use of the "Print Screen" function, all subject to the user charges set forth in Part C.

3. Rights in Data. Except for the license granted herein, all right, title and interest in ATFI data are and shall continue to be the exclusive property of FMC to the fullest extent permitted by law.

4. Disclaimer of Warranties and Limitation of Liability. ATFI data are provided "as is," without warranty of any kind, express or implied, including, but not limited to the warranties of performance, merchantability and fitness for a particular purpose. User shall make no claim(s) for damages relating to ATFI data. FMC's entire liability and the User's exclusive remedy shall be the replacement of any defective magnetic tapes which are returned to the FMC with a copy of the User's receipt. FMC has no liability whatsoever to User for any claim(s) relating in any way to:

(a) User's inability or failure to access or use data properly or completely; or

(b) Any lost profits, consequential, incidental or other special damages relating in whole or in part to User's rights hereunder or use of or inability to use data, even if FMC has been advised of the possibility of such damages.

B. General Provisions

1. Responsibility for Certain Matters. User shall be responsible for all access to and use of ATFI data by User's personnel or by means of User's equipment, whether or not User has knowledge of or authorizes such access or use.

2. Term and Termination. This agreement shall become effective on the date executed by the FMC, and shall continue in force until terminated by either party upon at least thirty (30) days prior written notice of termination to the other party. Notwithstanding the foregoing, either party may terminate this agreement immediately upon giving written notice of termination to the other party if the other party commits a material breach thereof. The FMC may suspend or terminate furnishing ATFI data tapes to User, after written notice, if User commits a material breach of this Agreement. Upon termination of this agreement, the Commission may require the User to immediately:

(a) Deliver to the FMC all previously obtained magnetic tapes of ATFI;

(b) Destroy all ATFI data in its possession in whatever form; and

(c) Provide written certification to the FMC that the actions described in subsections (a) and (b) of this section B.2 have been accomplished.

3. Effect of Agreement. This Agreement embodies the entire understanding between the parties with respect to the use of ATFI data, and supersedes any and all prior understandings and agreements, oral or written, relating thereto.

4. Force Majeure. FMC's obligations under this agreement are subject to interruption and delay due to causes beyond its reasonable control such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies and the like.

5. Notices. Except as otherwise specifically provided herein, all notices required to be given to the FMC shall be in writing, addressed to Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001. Notice to User shall be at the address set forth above.

6. Governing Law. This agreement shall be governed by and construed under federal law. Any and all proceedings relating to the subject matter of this agreement shall be maintained in the Federal District Court for the District of Columbia, which court shall have exclusive jurisdiction for such purpose. User hereby submits to the jurisdiction of the Federal District Court for the District of Columbia and waives service of process except by regular mail.

7. Other Provisions. Neither this agreement nor any part thereof shall be assigned, sublicensed or otherwise transferred by User without prior written consent from the FMC. Should any provision of this agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby. Failure of a party to enforce any provision of this agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision. The headings and captions contained in this agreement are for convenience only and do not constitute a part thereof.

C. Charges

1. Charges Payable by User. Charges payable by User for access to the ATFI data contained on the magnetic tapes are forty-six U.S. cents (46¢/$00.46) per minute, or any portion thereof.

2. Modification of Charges. Charges for use of the data are prescribed by 46 U.S.C. app. 1707a(d). In the event the charges in such law are modified, the User will be promptly notified and the User agrees to pay the charges as modified unless it terminates under section B.2., hereof.

3. Billing and Payment. Within ten (10) calendar days after the end of each month, beginning _____, User shall transmit to the Office of Budget and Financial Management, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, a report of all usage of ATFI data listed by user, date and minutes used. User shall simultaneously transmit payment (to "the Federal Maritime Commission") for such usage at the rate of 46 cents (46¢/$00.46) per minute. If payment is not made when due, User may thereafter be assessed interest, penalties and administrative costs associated with collection of late payments in accordance with the Federal Claims Collection Standards, 4 CFR 102.13. FMC intends to utilize the provisions of the Debt Collection Act, 5 U.S.C. 5514, including disclosure to consumer reporting agencies, to ensure prompt payment. FMC reserves the right to suspend or terminate furnishing ATFI data tapes to User if payment is not made when due.

4. Recordkeeping. The User shall maintain, for a period of three (3) years during, and after termination of, this agreement, books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.) sufficient to reflect properly the charges to be paid under this agreement, including, specifically, all records of access granted, fees charged, and payments made to User and remittances to FMC. The FMC or its representatives shall have the right to examine and audit all of the User's books, records, documents, and other data, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.) for the purpose of evaluating the accuracy and completeness of the reports required by sections C.3, above. The right of examination shall extend to all documents and other data, regardless of form, necessary to permit adequate evaluation of the reports submitted, along with the computations used.

5. Accounting System. Prior to obtaining magnetic tapes of ATFI data, User shall submit to the FMC a model of the charging system it intends to use to comply with sections C.3 and C.4, to enable the FMC to determine whether such system is sufficient to provide accurate and complete reports as required herein. The FMC shall have up to sixty (60) calendar days after submission to evaluate such system and its approval will be assumed unless the FMC otherwise formally notifies the applicant within the sixty-calendar-day period. Magnetic tapes of ATFI shall not be made available to User until its charging system is approved by FMC.

D. Penalties

1. Civil Penalties. Civil penalties may be imposed for refusal to pay the required user fee. See 46 U.S.C. app. 1707a(f)(1).

2. Criminal Penalties. Criminal penalties may be imposed for refusal to pay the required user fee. See 46 U.S.C. app. 1707a(f)(2).

3. Enforcement. The Department of Justice will be responsible for enforcement of violations of this agreement.

Federal Maritime Commission

By _____
Title _____
Date _____

User

Signature _____
Title _____
Date _____

[FR Doc. 93–2832 Filed 2–5–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket No. 48637; Notice No. 93-8]

Procedures for Transportation Workplace Drug Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of pilot project on proposed Management Information System (MIS) forms and submission procedures; request for participation.

SUMMARY: On December 15, 1992, the Department of Transportation (DOT) issued Notices of Proposed Rulemaking (NPRM) to require DOT regulated employers to submit an annual report summarizing the results of their drug and alcohol testing programs for each calendar year. These reports are designed to provide DOT with program evaluation and compliance information. This notice establishes a pilot project on the proposed reporting forms and submission procedures.

EFFECTIVE DATE: This notice establishes April 1, 1993, as the date selected employers would submit the reporting forms to the appropriate Operating Administration as a voluntary preimplementation assessment of the proposed reporting system.

ADDRESSES: Send written requests to participate in the pilot project to: Office of the Secretary, Drug Enforcement and Program Compliance, Department of Transportation, 400 7th Street, SW., room 9404, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Donna Smith or Lamar Allen, (202) 366-3784.

SUPPLEMENTARY INFORMATION: The December 1, 1989, Final Rule, 49 CFR part 40, Procedures for Transportation Workplace Drug Testing Programs, did not include requirements for collecting standard data for program evaluation and compliance. The December 15, 1992 NPRM issued by the Office of the Secretary proposes to add § 40.81 and § 40.83 to 49 CFR part 40 establishing a Management Information System (MIS) to collect anti-drug program data. The operating administrations (FAA, FHWA, FRA, FTA, RSPA and USGC) also published NPRMs on December 15 that proposed to require employers to maintain and submit annually as required, data to the appropriate operating administration. Each NPRM includes a proposed reporting form specific for the particular regulated industry. The results and findings from this pilot project will be shared with each operating administration to use in the development of their particular rule. Through this notice the Department is requesting employers to volunteer to test the use of the reporting forms and the submission process. The information submitted would be used to evaluate the forms and submission process only. The information provided would not be used for compliance or enforcement actions. The data submitted should be based on realistic employer data and will be used for research purposes only, and not attributed to a specific employer. The pilot project is designed to review the reporting form and not the accuracy of the submitted data. Employers willing to participate should contact the Department no later than March 1, 1993, by telephone or letter to the contact persons listed above. If there are insufficient volunteers the Department will specifically request additional participation. Information and data on the forms and the submission process derived from this pilot project will be placed in the NPRM dockets. Employer names will not be associated with any data.

Issued this 1st day of February, 1993, at Washington, DC.

Donna R. Smith,

Acting Director, Office of Drug Enforcement and Program Compliance.

[FR Doc. 93-2903 Filed 2-5-93; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. 92-28; Notice 2]

RIN 2127-AB85

Federal Motor Vehicle Safety Standards; Head Impact Protection

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Standard No. 201, Occupant Protection in Interior Impact, to require passenger cars and light trucks, buses and multipurpose passenger vehicles to provide protection when an occupant's head strikes upper interior components, including pillars, side rails, headers, and the roof, during a crash. The proposed amendments would add procedures and performance requirements for a new in-vehicle component test. Insofar as this rulemaking applies to passenger cars, it is required by the NHTSA Authorization Act of 1991.

DATES: *Comment closing date:* Comments on this notice must be received by NHTSA no later than April 9, 1993.

Proposed effective date: The agency is considering a single effective date for full implementation of the new requirements of the first September 1 that occurs following either approximately a two or three year period beginning with the publication of a final rule in the **Federal Register**. The agency is also considering a phase-in of the new requirements, beginning one to two years after publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-4924).

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I. Background

A. Existing Standard

For many years, Standard No. 201, Occupant Protection in Interior Impact, has specified requirements for passanger cars and LTV's to afford protection for occupants in interior impacts. (The term "LTV's" refers to trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less.) The interior areas presently covered by the standard include the instrument panel, seat backs, interior compartment doors (such as the door of a glove box), sun visors, and armrests.

A significant number of occupant injuries and fatalities result from head impacts with upper interior components not covered by Standard No. 201. NHTSA, therefore, initiated a research program in the mid-1980's to support upgrading the current standard to provide occupant protection in these impacts.

B. August 1988 ANPRMs

On August 19, 1988, the agency published in the **Federal Register** (53 FR 31712, 31716) two ANPRM's which addressed the issue of improved head impact protection, among others. One of the ANPRM's covered passenger cars, the other, LTVs. NHTSA noted that almost one-half of all fatalities in passenger car side impacts, and a large number of LTV side impact fatalities, occur as a result of head injuries. The agency indicated that, while many head injuries occur as a result of ejection from the vehicle, a high percentage occur due to head/face impacts with vehicle interior components, such as the pillars and rails supporting the roof.

NHTSA stated that it believed that various techniques, including the use of padding, may be available to reduce the severity of, and in some cases prevent, many head injuries. In particular, the agency stated that it believed the following three techniques are of particular promise: (1) Padding the A, B and C pillars, roof rail components and window frames with hard rubber or high density foam materials, (2) Eliminating sharp angle, thin edge design features in the component areas where head impacts are most likely to occur, and (3) Reducing the local stiffness of the component areas where head impacts are most likely to occur (without compromising the overall structural integrity of the roof-pillar structures).

The agency indicated that there are a number of possible approaches to expressing performance requirements and that various devices could be used to measure the severity of impact that would be experienced by the head in real world crashes by specified component tests. NHTSA noted that one possible performance requirement would place limits on head acceleration during specified component tests using a headform impactor which is freely propelled into, and rebounds from, the component being tested.

C. Comments on ANPRMs

NHTSA received numerous comments on improved head impact protection, including ones from many car and LTV manufacturers. While a number of manufacturers indicated that they agreed that efforts are needed to improve head impact protection, they also expressed a number of concerns.

Some manufacturers stated that additional research was needed about head injury mechanisms and injury criteria. General Motors (GM) stated that the addition of padding to the roof rails, headers or pillars might reduce the impact forces on a headform during a test. It stated further, however, that it is possible a more complete look at the overall dynamics of a vehicle crash, occupant kinematics, and factors controlling injury causation might, in specific instances, dictate the use of other countermeasures which better address real world crashes. Ford commented that the Head Injury Criterion (HIC, the injury criterion used in Standard No. 208) may be an appropriate injury criterion, but that, in order to be meaningful, it should be uniquely developed for oblique and/or side impacts.

Chrysler stated that, before proceeding to an NPRM, NHTSA should conduct a well-defined analysis of the entire head injury/interior contact issue. That company stated that the analyses used in the Preliminary Regulatory Impact Analysis PRIA accompanying the ANPRM's were out-of-date as they did not reflect increased seat belt usage and the automatic restraint requirements of Standard No. 208, Occupant Crash Protection.

Several manufacturers expressed concerns about possible safety tradeoffs. GM stated that the addition of padding might increase neck injuries by allowing pocketing of the head and thereby generating neck loads not previously associated with a more rigid impact surface. That company stated that the type of free motion headform tests conducted during NHTSA's research program would not allow the determination of neck loads and their effect on head kinematics. GM suggested that the agency consider the use of other test devices, such as using the upper torso of a Hybrid III dummy in a subsystems test configuration.

Mercedes-Benz commented that restriction of head travel can increase thoracic loading and stated that the effects of padding should be analyzed to ensure that head injury risk is not decreased at the expense of increasing thorax injury risk.

Ford stated that it believes there may be some potential for increasing energy absorption in the pillar areas, but emphasized that any new regulation should not require designs that decrease the driver's field of view. Several other manufacturers also expressed concern that padding of the pillars could obscure the driver's field of view and create a safety risk. Some manufacturers stated that pillars cannot be reduced in thickness, for purposes of accommodating additional padding while maintaining field of view, without compromising structural strength.

A number of manufacturers expressed concerns about public acceptance. GM commented that NHTSA should evaluate all potential vehicle countermeasures in terms of anticipated public acceptance. It indicated that the agency must anticipate consumer response to even seemingly mundane design changes such as the addition of padding. That company stated that the likelihood of a consumer response strongly suggests that requirements should be performance oriented and not restrict manufacturers to use of specific designs.

Toyota stated that adding padding on the roof side rails and B pillars would reduce occupant space, causing passengers to feel "closed in," and also adversely affect ease of entry and exit. That company stated that such problems could be mitigated by widening the vehicle body and other design changes, but that this would entail major design changes and a sharp drop in fuel economy. Subaru commented that a requirement for additional padding would favor larger model designs and could indirectly regulate the overall size of passenger cars.

Several manufacturers, including BMW, Mitsubishi and Volkswagen, urged NHTSA to base any head impact protection requirements on Europe's Regulation No. 21. BMW noted that Regulation No. 21 defines head impact

areas and mandates the use of energy-absorbing materials in those zones.

The Recreation Vehicle Industry Association (RVIA) and the National Truck Equipment Association (NTEA) expressed concerns about the possible impacts of new head impact protection requirements on final stage manufacturers. RVIA stated that recreation vehicles and other LTVs already provide considerably more protection to occupants than passengers cars do because they are structurally stronger and their occupants are seated above impact areas. It argued that additional requirements for head protection are not justified for these vehicles.

The Insurance Institute for Highway Safety (IIHS) commented that it believes that rulemaking to reduce the risk of head injuries is long overdue. It stated that HIC is the appropriate measure for assessing severity of blunt impact, but noted that the response of a Hybrid III dummy head is significantly different for side impacts than for frontal impacts. IIHS urged that a tolerance level lower than HIC 1000 (Standard No. 208's performance limit for frontal crashes) be adopted for side impact tests.

D. Statutory Requirement for Rulemaking

The NHTSA Authorization Act of 1991 requires the agency to address several vehicle safety subjects through rulemaking. One of these subjects, set forth in section 2503(5) of the Act, is improved head impact protection from interior components of passenger cars, i.e., roof rails, pillars and front headers.

On June 5, 1992, NHTSA published in the **Federal Register** (57 FR 24008) a notice of intent announcing that it would publish a notice of proposed rulemaking (NPRM) on improved head impact protection by January 31, 1993. As discussed in that document, section 2502(b)(2)(A) of the Act generally provided that NHTSA must publish, no later than May 31, 1992, an advance notice of proposed rulemaking (ANPRM) or an NPRM on this subject. However, the section also provided that the deadline could be extended to January 31, 1993 if the agency was unable to meet the earlier deadline. The June 1992 notice explained why NHTSA needed additional time to publish an NPRM.

NHTSA is issuing today's NPRM in accordance with section 2502(b)(2)(A) of the Act. While the agency was only required to address improved head impact protection for passenger cars, the agency is also proposing requirements for LTV's.

Section 2502(b)(2)(B)(iii) of the Act generally provides that this rulemaking action (as it applies to passenger cars) must be completed within 24 months of publishing the NPRM. Upon publication of justification, NHTSA may delay the date for completion for not more than six months. Under the Act, the rulemaking will be considered completed when NHTSA promulgates a final rule with standards on improved head injury protection.

II. Summary of Proposal

NHTSA is proposing to amend Standard No. 201 to require passenger cars and LTV's to provide protection when an occupant's head strikes upper interior components, including pillars, side rails, headers, and the roof, during a crash. The proposed amendments would add procedures and performance requirements for a new in-vehicle component test.

Under the proposed test procedure, a modified Hybrid III dummy head, referred to as a free motion headform or FMH, is launched from inside the vehicle and propelled freely through the air so that its forehead strikes the selected target component (e.g., pillar, side rail or header) at impact speeds of up to 15 mph. The proposed amendments would require passenger cars and LTV's not to exceed specified HIC limits when any of their specified components are impacted.

The agency is proposing two alternatives regarding performance limits. The first is a single, across-the-board limit of HIC(d) 1000 for all specified upper interior components. The second is a two-tiered limit of HIC(d) 1000 for the forward and rearward upper interior components (front header, rear header and A-pillar) and HIC(d) 800 for side upper interior components (side rails and pillars other than the A-pillars) and the middle portion of the roof.

III. Safety Problem

NHTSA has analyzed the incidence of head injury due to contact with vehicle interior components during crashes. The agency estimates that head impacts with the pillars, roof side rails, windshield header, and rear header result in nearly 3,000 passenger car occupant fatalities and more than 400 LTV occupant fatalities per year. Such head impacts also result in nearly 6,000 serious (but non-fatal) passenger car occupant injuries (AIS 3 or greater), and more than 800 serious LTV occupant injuries. (The AIS or Abbreviated Injury Scale is used to rank injuries by level of severity. An AIS 1 injury is a minor one, while an AIS 6 injury is one that is currently untreatable and fatal.) In making these estimates, the agency counted cases where the head injury was the most serious injury and where there was no injury of the same AIS level.

The agency has also made estimates of the distribution of fatalities and serious injuries by point of contact. These estimates are presented in Table I.

TABLE I.—SERIOUS HEAD INJURIES/FATALITIES BY IMPACT POINT

	AIS 3–5	Fatal
Passenger cars:		
A-pillar	3071	1530
B-pillar	888	429
Roof side rails	980	463
Front header	937	473
Rear header	22	12
Other pillar	76	35
Total	5974	2942
LTVs:		
A-pillar	493	245
B-pillar	34	17
Roof side rails	134	63
Front header	164	82
Rear header	3	1
Other pillar	0	0
Total	828	408

The vast majority of these fatalities and serious injuries are attributable to impacts with upper interior components in the front of the vehicle, i.e., components from the B-pillar forward. NHTSA estimates that 2895 of the 2942 passenger car fatalities, and 407 of the 408 LTV fatalities in various crash modes, occur in head impacts with components in the front of the vehicle occupant compartment.

NHTSA's fatality and injury estimates are primarily derived from a 1991 agency paper entitled "Serious Head Injury in Light Passenger Vehicles from Rail, Header, and Pillar Contact," by Partyka. The Partyka paper used 1988–89 data from the National Accident Sampling System (NASS) and 1989 data from the Fatal Accident Reporting System (FARS). Partyka analyzed the distribution of these injuries by point of impact. A hard copy analysis of the data indicated that several cases coded as side window frame impacts were actually apparent contacts against other components. Therefore, the distribution of impacts against various components was revised. The resulting data are presented in the table above. The PRIA for this NPRM provides additional information concerning the derivation of the agency's estimates, as well as additional breakdowns of the estimates.

The agency notes that there are not a sufficient number of real-world cases of occupant head injuries in air bag equipped vehicles to estimate the impacts of air bags on potential head injuries. NHTSA does not expect that air

bags would reduce injuries from striking the B-pillar or roof side rails, given the relative location of the air bags and those parts of the vehicle interior.

IV. Proposed Test Procedure

NHTSA is proposing a test procedure which simulates a passenger car or LTV occupant's head striking an upper interior component, in the same manner that would occur during a crash. Under the procedure, a modified Hybrid III dummy head is launched from inside the vehicle and travels freely through the air so that its forehead strikes the selected target component (e.g., pillar, side rail or header). The head, referred to as a free motion headform or FMH, is instrumented with accelerometers for measurement of head acceleration during the impact. These measurements are then used to calculate the specified injury criterion, HIC.

A. Propulsion Unit

The proposed test procedure specifies that upper interior components are impacted by an FMH at any speed up to and including 15 miles per hour. NHTSA is not proposing to specify a specific method for propelling the FMH, since the means of propulsion (as opposed to impact conditions) does not affect test results. However, it is likely that manufacturers will use a method similar to that used in NHTSA's research program.

The propulsion unit used in NHTSA's research was developed by GM. It is a pneumatic impactor that uses compressed nitrogen, built up to a high pressure. The headform is held on by a magnet. When the nitrogen is released, it pushes a piston forward about three inches and the headform is pushed off the magnet into free flight. The impact velocities achieved by the propulsion unit are very repeatable. The propulsion unit is articulated to allow it to be positioned for firing at nearly any angle within the vehicle.

B. Free Motion Headform

NHTSA is proposing specifications and qualification requirements for the FMH, which would be set forth in a new subpart L of part 572. The specifications consist of a drawing package containing all of the technical details of the FMH parts and FMH assembly. In addition, there is an FMH user's manual which sets forth disassembly, inspection, and assembly procedures.

NHTSA believes that these drawings and specifications would ensure that the headforms vary little in their construction. Performance criteria would serve as calibration checks and further assure the uniformity of headform assembly, construction, and instrumentation. As a result, the repeatability of performance in impact testing would be ensured.

The FMH was developed as part of NHTSA's research program, and is essentially a modified Hybrid III dummy head. The modifications include replacing the Hybrid III skull cap with a steel skullcap plate, which allows the FMH to be mounted to the propulsion unit by means of a magnet. In addition, the skullcap plate serves to hold the headskin in place during testing. Unlike the headskin of an earlier version of the FMH, the headskin of the FMH specified in this proposal is not glued in place. Finally, the nose of the Hybrid III head was removed, to eliminate interference during testing. The FMH is instrumented with a set of tri-axial accelerometers, positioned to measure the acceleration of the center of gravity, which permit the measurement of HIC.

NHTSA believes that the FMH has two advantages over more traditional guided headforms. First, since the FMH does not utilize a guiding mechanism, it can simulate the glancing and nonperpendicular impacts experienced in real world crashes. Second, the FMH could be equipped with rotational accelerometers if desired. NHTSA is not at this time proposing any performance requirements concerning head rotational motion, since it does not have sufficient biomechanical data to support specific requirements. However, if manufacturers voluntarily add additional instrumentation to the FMH, they can measure head rotational motion during impacts and utilize the information in designing their vehicles.

NHTSA notes that there are alternative free motion headforms that could be considered for rulemaking purposes. The agency has developed a featureless headform, and Ford has developed a hemispherical headform. While the agency is not aware of any problems with either of these headforms, it does not have the test data for these headforms that would be necessary to support rulemaking. Moreover, the time needed to generate such test data would significantly delay the safety benefits offered by this rulemaking. Finally, the agency does not believe that these alternative headforms offer any significant advantages over the proposed FMH. Therefore, the agency is not proposing to specify either of the alternative headforms, although it may investigate, for the proposed FMH, the possibility of molding a head skin without facial features.

C. Biofidelity

Biofidelity is a measure of how well a test device duplicates the responses of a human being in an impact. The Hybrid III dummy is specified in Standard No. 208. Its biofidelity in frontal impacts is well accepted, particularly for forehead impacts. Therefore, NHTSA's primary concern, in developing a component test using the FMH, was whether the FMH responses (for forehead impacts) correlate to those of a Hybrid III dummy subjected to similar impact loading in sled tests, and whether this correlation holds up for impacts with components that are representative of a wide range of passenger vehicles. The responses examined by the agency were HIC and peak head resultant acceleration.

NHTSA conducted a series of tests and analyses to determine the relationships between the Hybrid III dummy responses and the FMH responses. First, the agency conducted tests consisting of impacts into actual and simulated vehicle upper interior structures at various angles. NHTSA conducted these tests both using the full Hybrid III dummy and using the FMH, and for both the baseline and padded conditions.

The results of the comparison tests indicate that the FMH responses followed the same trends as, and were very close in value to, the whole dummy head responses at impact speeds of 15 mph and 20 mph.

NHTSA then performed analytical modeling of the FMH and the Hybrid III dummy, to examine the correlation between the tests and the head responses. The results of the modeling reinforce the results of the comparison by testing.

While there is a strong relationship between the HIC responses obtained using the FMH and full Hybrid III dummy, the results are not identical. However, NHTSA developed a transform function or conversion factor, using test data from simulated structure testing of the FMH and the full dummy. This transform function can be used to translate FMH responses into full Hybrid III dummy responses. NHTSA believes that the full dummy responses are representative of a human, based on the accepted biofidelity of the Hybrid III dummy. The transform function is:

Full Dummy HIC or HIC(d)=0.75446 (FMH HIC)+166.4.

D. Repeatability and Reproducibility

NHTSA has evaluated the repeatability and reproducibility of the proposed test procedure, with particular focus on the FMH responses. Repeatability refers in this context to the

control of variation of FMH responses in replicate tests using the same FMH, while reproducibility refers to control of variation of FMH responses in replicate tests using different FMHs. The agency considers ±10 percent to be an acceptable range of variability and a measure of good repeatability or reproducibility, while ±5 percent is considered to be highly acceptable variability and an indicator of excellent repeatability or reproducibility.

As a starting point, the agency notes that it has previously determined that the Hybrid III head, as a component of the full Hybrid III dummy, has highly acceptable variability or excellent repeatability and reproducibility. There is no reason to believe that these characteristics would change because of the minor changes made in the FMH design or because the FMH is separately propelled against a vehicle interior structure.

In evaluating repeatability, NHTSA first conducted a series of simulated structures tests. These tests were designed to provide a controlled impact environment so that any variability was limited to the FMH test equipment and the test procedure. The agency conducted tests for different impact speeds, impact angles, and degrees of structure stiffness.

The agency found that the average percent variation for HIC and peak head resultant acceleration was generally highly acceptable, for both baseline and padded test conditions. NHTSA measured average percent variation for 12 different sets of test conditions. Eight of the average percent variations measured were less than five percent, and the other four only slightly exceeded five percent. NHTSA notes that these tests were conducted with an early version of the FMH which included the Hybrid III nose and glued headskin. Given the minor nature of the subsequent design changes, however, the agency believes that the test data are representative of the proposed FMH.

NHTSA also evaluated FMH repeatability in 27 pairs of full scale vehicle tests. Thirteen of the tests were conducted using the interior of a 1987 Volkswagen Golf; the other 14 were performed using a 1989 Dodge B–150 van. The agency conducted tests for baseline and padded conditions and for different vehicle components at varying angles. The tests were conducted at 15 mph and used the proposed FMH. The overall average percent variation for both HIC and peak head acceleration, across both vehicles, was acceptable (below 10 percent).

In order to evaluate reproducibility, the agency conducted another series of simulated structures tests. NHTSA modified four Hybrid III heads to be FMHs, consistent with the specifications proposed in this document. The agency conducted baseline and padded tests for different impact speeds, impact angles, and degrees of structure stiffness. The test results showed that the reproducibility of the FMH is acceptable.

NHTSA also combined FMH response data from three different test series and time periods to measure variability. Data from five simulated structure tests, using the proposed FMH, conducted by the agency in 1991 and 1992 to measure padding effectiveness were combined with data from five earlier tests which were identical except that the earlier version of the FMH was used. Four of the five sets of data showed acceptable reproducibility with variability at 10 percent or less. The variability was, however, higher than for the simulated structure tests discussed above. The fifth set had variability of 14.89 percent. NHTSA believes that the higher variability in these sets of data may have been due to differences between the earlier and later FMH designs or variations in stiffness of the materials used for the simulated structures, which were purchased between 1989 and 1992

Based on the above tests and analyses, which are described in more detail in the PRIA, NHTSA has tentatively concluded that the repeatability and reproducibility of the proposed test procedure are sufficient for this rulemaking.

E. Qualification Tests

NHTSA has explained in dummy rulemakings that before a test dummy can be used in a vehicle crash test, it must be examined to determine whether it conforms to all of the specifications set out in the blueprints for the dummy. In addition, the dummy must be carefully examined to ensure that it has been correctly assembled. Finally, the test dummy must pass a series of qualification tests. The purpose of a qualification test is to measure the performance of the test dummy in a well-controlled laboratory impact test to determine whether the test responses are within specifications and thus the test dummy will provide objective test results.

These same points are relevant to the proposed FMH, since it is an anthropomorphic test device and is, as noted above, essentially the head of a Hybrid III dummy. NHTSA is proposing the same qualification test for the FMH that applies to the Hybrid III dummy head, a drop test. In this test, acceleration is measured when the FMH is dropped from a height of 14.8 inches. The proposed limits are that the acceleration shall not be less than 225g and not more than 275g. In addition, the acceleration/time curve for the test must be unimodal to the extent that oscillations occurring after the main acceleration pulse are less than ten percent (zero to peak) of the main pulse, and the lateral acceleration vector may not exceed 15g (zero to peak).

F. Temperature Sensitivity/Time Between Tests

Changes in temperature can affect the responses of anthropomorphic test devices. Therefore, it is important to specify a test temperature range, while ensuring that the range is practicable. The proposed test procedure specifies that the FMH be placed in a controlled temperature environment for at least four hours within a 66–78 °F. temperature range before an impact test. In addition, the FMH is to be maintained within this temperature range during a test.

The proposed temperature range is the same as that specified in part 572 for the Hybrid III dummy head drop test. It is also the same as that specified in Standard No. 208 for crash tests using the part 572 Subpart B dummy and in Standard No. 214 for crash tests using the SID dummy. NHTSA notes that Standard No. 208 specifies a narrower temperature range for crash tests using the Hybrid III dummy. The agency adopted a narrower temperature range in Standard No. 208 because the Hybrid III dummy chest is particularly sensitive to temperature change. The narrower temperature range is not relevant to the proposed FMH, since it is based only on the Hybrid III head.

Part 572 specifies that there should be at least three hours between successive head drop tests on the same Hybrid III dummy head. The waiting period permits resilient materials to return to their undeformed state, thereby ensuring their proper response characteristics. Since the proposed FMH is based on the Hybrid III dummy head, NHTSA believes that there should also be a waiting period between successive tests (drop tests and/or impact tests) using a single FMH. The proposed regulatory text specifies a three hour period since that is the period specified for the Hybrid III dummy head. The agency specifically requests comments, however, on whether some shorter period would be sufficient, as a shorter period would facilitate conducting a larger number of tests per day. Depending on the comments, NHTSA may specify a waiting period of less than three hours.

G. Impact Speed

In developing the proposed test procedure, the agency examined data in the National Accident Sampling System (NASS) to determine the mean delta V by AIS injury level due to impact with the vehicle A-pillar, front header, and side rails. Delta V represents the total velocity change of the struck vehicle during a crash. The agency then analyzed laboratory data to estimate the head contact velocity into the vehicle upper interior components associated with that vehicle delta V.

Under the agency's proposal, performance requirements would need to be met when a vehicle's upper interior components are impacted by an FMH at any speed up to and including 15 mph. The 15 mph speed corresponds to an average injury level between AIS 2 and AIS 3, or essentially the onset of serious injury. It is also the test speed that is generally specified for the existing requirements of Standard No. 201. Finally, the agency's testing indicates that there may be a practicability problem with higher test speeds, such as 20 mph, as it may not be possible to meet the proposed performance limits (HIC 1000 or HIC 800) at such speeds without using unacceptably thick padding.

H. Impact Configuration; Target Areas

In real-world crashes, an occupant's head may strike the upper interior of the vehicle at any of many different places and at any of many different angles. The agency is therefore proposing to require that vehicles meet specified HIC(d) limits when any portion of a number of specified upper interior surface areas is impacted by the FMH, at any of a range of specified angles.

As noted above, NHTSA is concerned about head impacts with the vehicle's upper interior structure, i.e., the pillars, the headers, and the side roof rails, and the roof.

The agency is not addressing head impacts with glazing in this rulemaking. Impacts with glazing are usually not as serious as impacts with structure, since structure is generally much stiffer than glazing. In addition, padding cannot be used as a countermeasure for head impacts with glazing.

The agency's proposal defines the specific areas on the upper interior components which would be required to meet HIC(d) limits. The areas are referred to as the pillar impact zones, front and rear header impact zones, side rail impact zones, and upper roof impact zone.

The pillar impact zones, front and rear header impact zones, and side rail impact zones are defined to include the named components themselves (structure and accompanying molding and attached components) and adjacent areas of the roof. Those remaining, middle portions of the roof comprise the upper roof impact zone.

In order to define where the other impact zones end and the upper roof impact zone begins, the proposal defines an upper roof zone plane. All interior surfaces of the vehicle above this plane would be included in the upper roof impact zone. NHTSA is proposing to define the upper roof zone plane as the horizontal plane passing through a point 0.5 inch below the highest point of the vehicle roof interior. The agency specifically requests comments on whether this proposed definition appropriately distinguishes the other upper interior components from the middle area of the roof, and on the practicability of demarcating these regions.

The header and side rail impact zones generally include the interior surface area from the border between the identified component and adjacent glazing such as the windshield, rear window, or side window glazing, to the upper limit horizontal plane. The pillar impact zones generally include the entire interior surface area of the pillar, from the lowest level of any adjacent daylight opening (but not lower than six inches (152.4 mm) above the driver's seating reference point), and the vehicle interior surface that is immediately above the pillar and is between the adjacent header and/or side rail impact zones.

For each impact zone, the proposed test procedure defines a range of angles at which the FMH would strike that zone. These angles are referred to as approach angles, since they are the angles at which the FMH would approach the impact zones. The ranges are expressed using a specified orthogonal reference system. The direction of travel by the FMH would be required to be within the specified ranges.

The proposed ranges of approach angles are generally broad. This reflects the fact that an occupant's head may impact a vehicle's upper interior components at many different angles.

The agency is proposing a somewhat narrower range of horizontal approach angles for the A-pillars. Given that the A-pillars are located well forward and somewhat to the side of the driver and other front seat occupants, the range of likely horizontal angles at which an occupant's head is likely to strike the A-pillars is narrower than for most other upper interior components. For example, an occupant's head is unlikely to strike the A-pillar from a direction that is perpendicular to the side of the vehicle.

NHTSA is proposing the widest possible range of approach angles, i.e., any angle, for the upper roof impact zone. This reflects the fact that an occupant's head may strike the roof at any angle during a rollover.

The agency notes that its research indicates that, using the proposed test procedure, FMH impacts with the middle areas of the roof (which comprise the upper roof impact zone) generally result in low HIC(d) readings. This is because these areas are usually less stiff than the other upper interior components. Since a significant number of serious head injuries resulting from impacts with the roof occur in rollovers when the occupant head strikes the roof when it is in contact with the ground, NHTSA believes that it might be appropriate to develop a test procedure which replicates that condition. However, the agency does not have sufficient information to propose such a procedure at this time. NHTSA believes that the requirements that it is proposing would ensure that head impact protection is provided at least in those areas of the roof where there are hard points, e.g., support structure, hard sunroof frames, etc. The agency believes that relatively few vehicles will need any changes to meet the proposed requirements for the upper roof impact zone.

NHTSA notes that, in some cases, it may be difficult to determine precisely where one impact zone ends and another begins. In cars with sloping roofs, for example, it is difficult to determine where the A-pillar ends and the side roof rail begins, because the A-pillar appears to merge into the roof rail. The inability to clearly differentiate between the various impact zones could create problems to the extent that different approach angles or different performance requirements apply to the different impact zones. The agency currently contemplates that areas of the vehicle interior surface that come within the definitions of more than one impact zone would be required to meet the requirements specified for all such zones. NHTSA requests comments on this issue.

Under the proposed test procedure, the area of the vehicle to be impacted by the FMH, i.e., any part of the front header impact zone, the rear header impact zone, the side rail impact zones, the pillar zones, and the upper roof impact zone, is marked with a solid target circle 0.5 inch in diameter, using any transferable opaque coloring

medium. The FMH is launched from any location inside the vehicle that is consistent with the approach angle limits and other test specifications. The FMH must travel through the air for a distance of at least one inch before making contact with the vehicle interior surface.

The first contact between the FMH and the vehicle interior surface must be between the forehead of the FMH and the target location on the vehicle, without any interference. More specifically, at the time of initial contact between the FMH and the vehicle, a specified portion of the FMH's forehead (headform impact zone) must contact some portion of the target circle, and no portion of the FMH may contact any part of the vehicle outside the specified impact zones. The agency is proposing that the forehead of the FMH make first contact with the vehicle interior surface because the FMH has been determined to have biofidelity in frontal impacts. Subsequent contacts outside the forehead impact zone and with other portions of the vehicle interior surface are permitted, as the FMH is free to rotate after the first contact.

NHTSA believes that it may be appropriate to include a definition of "initial contact" in Standard No. 201 or otherwise specify the time during which interference must not occur, since there may not be a practical difference between interference that occurs at the exact moment of initial contact and interference that occurs immediately after that time but prior to peak acceleration on the FMH. One problem with specifying an interval of time during which interference must not occur is that the interval between the exact moment of initial contact and peak acceleration on the FMH will vary considerably depending on the surface being impacted. The agency requests comments on this issue. Depending on the comments, the agency may include a definition of initial contact or other relevant specification concerning this issue in a final rule.

NHTSA also requests comments on how the time of initial contact can most appropriately be ascertained. One possibility would be to place an event marker switch behind the target circle. Would such a procedure affect the responses of the FHM? Is there any other procedure that would be more appropriate? Depending on the comments, the agency may specify a procedure for determining the time of initial contact in a final rule.

NHTSA notes that it is not possible to conduct the specified test procedure for some portions of the specified impact zones, since other parts of the vehicle, e.g., the windshield or instrument panel, would interfere with the test. Such portions of the impact zones would not be subject to any performance requirements.

I. Exclusions

In the preceding section, NHTSA discusses the areas of a vehicle's interior surface that would generally be required to meet HIC(d) limits. However, the agency believes that certain portions of these areas should be excluded from the requirements under certain circumstances since head impacts with such areas are very unlikely in real world crashes.

An obvious area which the agency believes should be excluded is that portion of the cargo area of vans that is not close to any designated seating position. The agency is proposing that a vehicle need not meet the proposed HIC(d) limits for any part of a vehicle located rearward of a vertical transverse plane 36 inches (914.4 mm) behind the seating reference point of the vehicle's rearmost designated seating position. The 36 inch value is based on the normal position of the head relative to the seating reference point and the possible movement of the head rearward in a crash. The agency believes this would be the maximum value of the distance for the location of the rearward plane behind the seating reference point but seeks comment on whether a lesser distance is more appropriate or cost-effective. NHTSA requests comments on whether the 36 inch distance would ensure that protection is provided for a vehicle's upper interior areas that an occupant's head is likely to impact (an occupant's head may be located behind the seating reference point), while avoiding requiring padding in areas that are so far behind occupant seating positions that they are very unlikely to be struck by occupants. Commenters are requested to supply data, to the extent available, on the benefits and costs of different values. Depending on the comments, the agency may select a distance different from 36 inches for a final rule.

NHTSA also requests comments on whether there are other areas which should be excluded from the proposed requirements. One such possible exclusion would be components along the side walkway of passenger vans, since occupants are not seated directly next to such components.

Another possible exclusion would be components in the rear of the vehicle, i.e., components behind a vehicle's front seat area. The agency notes that, of the approximately 1100 passenger car occupant fatalities that would be prevented by the proposed requirements, only about 35 would be rear seat occupants. Moreover, of the approximately 300 LTV occupant fatalities that would be prevented, only one would be a rear seat occupant. While a very small percentage of the benefits are for rear seat occupants, a large percentage of the costs are due to modifications required in the rear seating areas. Nearly half the costs of the proposed rule are related to modifications of the rear seat area but fewer than three percent of the benefits are.

As discussed in the agency's Preliminary Regulatory Impact Analysis (PRIA), NHTSA estimates the costs per equivalent life saved for the front seat area of passenger cars at $148,000 to $223,000, and for the front seat area of LTV's at $579,000 to $741,000 (using a seven percent annual discount rate). However, the agency estimates the costs per equivalent life saved for the rear seat area of passenger cars at $5.3 million to $9.1 million, and for the rear seat area of LTV's at $139 million to $211 million (also using a seven percent annual discount rate).

These estimates are based on equivalent lives saved both for passengers who are wearing and for those who are not wearing seat belts. Data presented in the PRIA show that for LTV's, a single unrestrained passenger accounts for the one equivalent fatality in LTV's on which the estimates of rear seat area costs per life saved are based. For passenger cars, about 61 percent of equivalent lives saved are attributable to incidents in which occupants are not wearing seat belts. With increased use of these occupant protection devices, the incremental benefits of this proposal would likely diminish and costs per life saved calculations would be accordingly higher.

In requesting comments on the possibility of excluding rear seating areas from the proposed requirements, for passenger cars and/or LTV's, NHTSA notes that it is possible that new integrated designs might result in much lower costs than the add-on padding designs reflected in the agency's cost estimates. However, such designs might require additional leadtime. The agency also requests comments on whether a longer leadtime for rear seating areas of passenger cars and/or LTV's should be provided.

If NHTSA should decide to exclude rear seating areas in a final rule, it contemplates an approach similar to that discussed above with respect to the cargo area of vans. More specifically, the agency would likely specify that a

vehicle need not meet the proposed HIC(d) limits for any part of a vehicle located rearward of a specified distance behind the seating reference point of the designated seating position of the driver. NHTSA requests comments on whether a 36 inch distance would be appropriate.

The agency notes that some possible exclusions are reflected in S4.2 of the proposed regulatory text. For the convenience of commenters, the proposed regulatory text shows two alternative versions of S4.2. The first alternative would exclude for, all vehicles, any part of the vehicle located rearward of a vertical transverse plane 36 inches (914.4 mm) behind the seating reference point of the vehicle's rearmost designated seating position. The second alternative would be the same as the first for passenger cars, but, for trucks, buses and multipurpose passenger vehicles, would exclude any part of the vehicle located rearward of a vertical transverse plane 36 inches (914 mm) behind the seating reference point of the designated seating position for the driver. While the regulatory text shows two alternatives, NHTSA emphasizes it is also considering other alternatives, including, as discussed in this document, other possible exclusions.

The agency also requests comments on whether any particular types of vehicles, such as walk-in vans, should be excluded. NHTSA requests that commenters favoring the exclusion of additional vehicle areas or types of vehicles provide a specific rationale for any suggested exclusion and, to the extent possible, a precise, objective definition of any area to be excluded. Depending on the comments, the agency may, in a final rule, exclude certain vehicle areas or types of vehicles.

NHTSA also requests comments on whether there are any types of components that should be excluded. The agency is particularly interested in comments concerning the possible exclusion of window frames that go up and down with the window. The agency requests that any commenters favoring the exclusion of certain types of components address whether it is practicable to meet the proposed requirements for such components and the need or desirability of providing such components (e.g., whether window frames are needed to obtain the safety benefits associated with glass-plastic glazing).

J. Multiple Impacts

One of the advantages of an in-vehicle component test procedure is that multiple areas of a single vehicle can be tested during a compliance test. NHTSA recognizes, however, it is not appropriate to test the exact same area of a vehicle more than one time, since some damage may occur during a test. The agency is therefore proposing that a vehicle being tested may be impacted multiple times, but that no impact target is to be closer than six inches, in any direction, to a prior impact target.

V. Performance Requirements

For many years, NHTSA has used a Head Injury Criterion (HIC) of 1000 as the performance limit specified in Standard No. 208 for frontal crashes. The HIC 1000 limit is also specified in Standard No. 213, Children Restraints.

In this rulemaking, NHTSA is proposing to require passenger cars and LTV's not to exceed specified HIC(d) limits when any of the specified upper interior components are impacted by the FMH in accordance with the specified test procedure. As indicated above, HIC(d) is calculated using the FMH, HIC and represents the HIC that would be experienced by a full dummy or actual vehicle occupant.

The agency is proposing two alternatives regarding performance limits. The first is a single, across-the-board limit of HIC(d) 1000 for all specific upper interior components. The second is a two-tiered limit of HIC(d) 1000 for the forward and rearward upper interior components (front header, rear header and A-pillar) and HIC(d) 800 for side upper interior components (side rails and pillars other than the A-pillars) and the upper roof.

NHTSA has determined in other rulemaking that HIC 1000 is the appropriate performance limit for frontal head impacts. The agency is proposing a lower HIC limit for the side upper interior components as part of the second alternative because research shows that the side of the head is more susceptible to injury than the front of the head, i.e., the head injury tolerance threshold is lower in lateral impacts than in frontal impacts. As discussed in the PRIA, some research has indicted that a lateral HIC limit that is 80 percent of a frontal HIC limit is appropriate.

NHTSA does not disagree with those commenters on the ANPRM which indicated that it would be desirable if a unique injury criterion were developed for lateral impacts. However, the existing biomechanical data are not adequate to develop such a criterion. Further, it would take many years of research to develop such data. In the meantime, the agency believes that significant safety benefits can be obtained by using HIC as a performance limit for lateral impacts. The agency specifically requests comment on the appropriateness of the HIC(d) 800 limit for lateral and roof impacts and whether it is generally equivalent to HIC(d) 1000 in frontal impacts in terms of head injury risks.

NHTSA requests comments also on the two alternative performance proposals generally. The agency notes that, as discussed below, the practical difference between the two alternatives consists of differences in the thickness of padding that would likely be require to meet them. While NHTSA believes that the 1000 HIC alternative could likely be met for almost all vehicles and components with the addition of one inch or less of padding, the 800/1000 HIC alternative could require 1½ inches of padding for a substantial number of vehicles. The agency requests comments on the practicability of then 800/1000 HIC alternative, including whether the need for thicker padding could create problems related to consumer acceptance and reduced visibility and whether there are alternative countermeasures (e.g., different kinds of padding or integrated structure and padding designs) that would enable manufacturers to meet the 800/100 HIC alternative without using thicker padding.

VI. Feasibility of the Countermeasures

NHTSA has performed a substantial number of tests to examine the existing level of upper interior head impact protection for many cars and LTV's, as determined by HIC measurements in tests using the FMH, and to evaluate the effectiveness of padding to improve that protection. The agency's effectiveness estimates indicate the percent by which the addition of a given amount of padding will reduce HIC measurements.

The PRIA presents data from baseline and padded tests for nine different passenger cars and six different LTV's. NHTSA used these data to estimate the effectiveness, in 15 mph impacts, of one inch of padding for A-pillars, B-pillars, the front header and side rails.

For A-pillars, the agency determined that there is a good mathematical relationship between baseline HIC and the amount by which HIC is reduced as a result of adding an inch of padding. This relationship is expressed in the following formula: Effectiveness=0.0278 (HIC(d))+1.009. The use of this formula can be illustrated using the following example. Assume that baseline HIC(d) is 1200. The effectiveness of one inch of padding is 34.369 percent. (Effectiveness=(0.0278×1200)+1.009, or 34.369.)

For the other structures, the mathematical relationship between baseline HIC and the amount by which

HIC is reduced by adding an inch of padding is not as clear. The agency therefore calculated average effectiveness estimates for those components. NHTSA estimates the effectiveness of one inch of padding for the other components at 30.9 percent for the B-pillar, 35.3 percent for the front header, and 54 percent for the roof side rail.

NHTSA examined data from simulated structure tests to analyze the relative effectiveness of ½ inch padding as compared to 1 inch padding. The agency determined that ½ inch of padding is 65.8 percent as effective as one inch of padding. This 65.8 percent figure can be applied to the agency's effectiveness estimates for the A-pillar, B-pillar, front header, and side rail. By way of example, since the agency estimates the effectiveness of adding one inch of padding to the B-pillar at 30.9 percent, the effectiveness of adding one-half inch of padding to the same component is 65.8 percent of 30.9 percent, or 20.3 percent.

The agency has also evaluated the effectiveness of 1½ inch padding. Based on tests for two vehicles, the agency estimates the effectiveness of 1½ inches of padding on the B-pillar to be 41.4 percent.

NHTSA has test data which can be used to estimate effectiveness for A-pillars, B-pillars, the front header, and side rails only. The agency believes, however, based on constructional similarities, that the front header is representative of the rear header and overhead consoles, that the B-pillar is representative of C-pillars and shoulder belt anchorages, and that the roof side rail is representative of sliding doors, hatchback and back doors, heater ducts, interior sliding door rails, and coat hooks.

The PRIA presents estimates of the thickness of padding that would need to be added to the various components of the nine cars and six LTV's that were tested by the agency, in order for those vehicles to meet the two proposed alternative performance limits. Many of the vehicles do not require any added padding on certain components, since the baseline tests measured HIC(d)'s below 800 and 1000.

By way of example, five of the nine cars do not require any additional padding on the A-pillar to achieve HIC(d)'s under 1000; three need ½ inch of padding and one needs 1 inch of padding. Four of the cars do not need any additional padding on the B-pillars to achieve HIC(d)'s under 1000; five need either ½ or 1 inch of padding. Seven of the cars do not need additional padding on the front header to achieve HIC(d)'s under 1000; two require either ½ or 1 inch of padding. Five of the cars do not need additional padding on the side rails to achieve HIC(d) under 1000; four need either ½ or 1 inch of padding.

NHTSA's testing shows that HIC(d) levels under 1000 can generally be achieved for cars and LTV's by the addition of ½ or 1 inch of padding. In only one vehicle tested, an LTV, was more than 1 inch of padding needed. That vehicle needed 1½ inches of padding on the A-pillar.

The agency's testing indicates that 1½ inches of padding may be needed to achieve HIC(d) levels under 800. For five out of nine cars and two out of six LTV's tested, 1½ inches of padding was needed on the B-pillar.

In summary, NHTSA's testing shows that it is possible to develop "production feasible" countermeasures that can reduce potential head injury from impacts with upper interior components of passenger cars and LTV's. While NHTSA's analysis focuses on the addition of padding, the agency notes that, as indicated by some of the commenters on the ANPRM, there are other potential countermeasures. Ford, for example, cited the possibility of using a thin sheet metal design. Since the agency is proposing broad performance requirements, manufacturers would be free to use any countermeasures that would enable their vehicles to meet the specified requirements.

VII. Estimate of Vehicle Fleet Improvement Needed for Compliance

NHTSA used the results from the tests of the production vehicles, discussed in the previous section, to estimate the percentage of the passenger car and LTV fleets that would need padding to meet the two proposed alternative performance limits. These estimates are presented in Tables II and III.

TABLE II.—PERCENT OF PASSENGER CAR FLEET NEEDING PADDING

	A-pillar	B-pillar	Front header	Side rail
Alternative 1—HIC 1000:				
None	55.6	44.5	77.8	55.6
½"	33.3	22.2	11.1	33.3
1"	11.1	33.3	11.1	11.1
1½"	0	0	0	0
Alternative 2—HIC 800/1000:				
None	55.6	0	77.8	33.3
½"	33.3	44.4	11.1	44.5
1"	11.1	0	11.1	11.1
1½"	0	55.6	0	11.1

TABLE III.—PERCENT OF LTV FLEET NEEDING PADDING

	A-pillar	B-pillar	Front header	Side rail
Alternative 1—HIC 1000:				
None	0	33.3	66.6	50.0
½"	16.7	33.3	16.7	16.7
1"	66.6	33.4	16.7	33.3
1½"	16.7	0	0	0
Alternative 2—HIC 800/1000:				
None	0	0	66.6	0
½"	16.7	33.3	16.7	66.7
1"	66.6	33.3	16.7	33.3
1½"	16.7	33.4	0	0

VIII. Costs

In preparing cost estimates, the agency looked at the average number of square inches of the upper interior components that may need padding in passenger cars and light trucks, and the cost and weight of that padding. In order to determine the area that may need padding, the agency measured the relevant components on a representative sample of passenger cars, utility vehicles, pickup trucks and vans. The vehicles included 25 passenger cars, four utility vehicles, five pickup trucks and four vans.

NHTSA generally assumed that 4.5-inch-wide padding would be needed to cover the underlying structure of the front and rear headers and the roof side rails. However, when interior molding in these areas was wider than 4.5 inches, the agency assumed that the manufacturer would use padding as wide as the current molding. In all other areas of the vehicle, actual measurements were used. The agency also assumed that cargo vans would not need any padding behind the B-pillar, since the agency is proposing that a vehicle need not meet the proposed HIC(d) limits for any part of a vehicle located more than 36 inches (914.4 mm) behind the seating reference point of the vehicle's rearmost designated seating position.

The PRIA presents a breakdown, by vehicle type, of the average square inches of padding that may be needed for the following components: Windshield header, overhead console, A-pillar, B-pillar, roof side rail—front to back of B-pillar, front shoulder belt, roof side rail—back, C-pillar, D-pillar, E-pillar, F-pillar, rear shoulder belt, hatchback/backdoor, sliding door, heater duct/interior sliding door rail, coat hooks, and rear header. The total average area that may require padding is 1,710 square inches for passenger cars, 2,772 square inches for vans, 2,319 square inches for utility vehicles, and 1,383 square inches for pickup trucks. The total average area for all LTV's that may require padding is 1,933 square inches.

NHTSA estimates the supplier cost (per square inch) of ½-inch polyurethane padding at $0.015, the cost of 1-inch polyurethane padding at $0.02, and the cost of 1½-inch padding at $0.025. The agency derived the consumer cost for padding by marking up the supplier cost estimates by the following three factors: 20 percent markup by the padding supplier to the manufacturer, 33 percent markup by the manufacturer to the dealer, and 14 percent markup by the dealer to the consumer. This results in a total markup for 81.9 percent, making the consumer cost of ½-inch padding $0.027 per square inch, the cost of 1-inch padding $0.036, and the cost of 1½-inch padding $0.045.

If all relevant upper interior components of passenger cars required the addition of ½-inch padding, the consumer cost (of padding alone) would be $46.17, and if 1-inch padding were required, the cost would be $61.56. For LTV's, the corresponding cost figures would be $52.19 and $69.59, respectively.

As discussed above, however, many vehicles do not require additional padding on some components, since the HIC(d) for those components is already below 800 and 1000. The agency estimated the average cost of padding needed to meet the two proposed alternatives by multiplying the percent of the fleet needing different thicknesses of padding on the various components under each of the alternatives by the average square inches of those components, and then multiplying by the cost of each of the padding thicknesses. NHTSA's estimates of the average cost of needed padding, and the weight of that padding, are set forth in Table IV.

TABLE IV.—ESTIMATED AVERAGE COST AND WEIGHT OF NEEDED PADDING

Alternative 1—HIC 1000:		
Passenger cars	$22.91	2.13 lbs.
Utility vehicles	41.10	4.08 lbs.
Pickup trucks	25.68	2.57 lbs.
Vans	48.38	5.16 lbs.
All LTV's	35.37	3.54 lbs.
Alternative 2—HIC 800/1000:		
Passenger cars	38.65	4.08 lbs.
Utility vehicles	63.02	6.42 lbs.
Pickup trucks	36.24	3.80 lbs.
Vans	80.53	8.16 lbs.
All LTV's	52.98	5.41 lbs.

In estimating total cost impacts, the lifetime fuel costs of carrying the extra weight of the added padding should also be considered. Taking fuel costs into account, the PRIA provides the following estimates of total vehicle costs:

TABLE V.—TOTAL PER VEHICLE AVERAGE COSTS INCLUDING LIFETIME FUEL PENALTY COST

Alternative 1—HIC 1000:	
Passenger cars	$25.51
Utility vehicles	46.54
Pickup trucks	29.11
Vans	55.27
All LTV's	40.09
Alternative 2—HIC 800/1000:	
Passenger cars	43.63
Utility vehicles	71.59

TABLE V.—TOTAL PER VEHICLE AVERAGE COSTS INCLUDING LIFETIME FUEL PENALTY COST—Continued

Pickup trucks	41.31
Vans	91.42
All LTV's	60.20

Another possible cost relates to secondary weight. Secondary weight refers to weight increases in other parts of the vehicle which might be made to compensate for the additional "primary" weight, i.e., the weight of the added padding. For example, these secondary weight increases could include increases in vehicle structure to maintain load-carrying ability. To illustrate the potential impact of secondary weight, the PRIA calculates costs using a theoretical weight factor of 0.7 pounds of secondary weight for each pound of primary weight that is added to the vehicle. The resulting estimates of total vehicle costs are as follows:

TABLE VI.—TOTAL PER VEHICLE AVERAGE COSTS INCLUDING LIFETIME FUEL PENALTY COST AND SECONDARY WEIGHT

Alternative 1—HIC 1000:	
Passenger cars	$28.57
Utility vehicles	52.73
Pickup trucks	33.00
Vans	63.09
All LTV's	45.46
Alternative 2—HIC 800/1000:	
Passenger cars	49.49
Utility vehicles	81.31
Pickup trucks	47.07
Vans	103.77
All LTV's	68.41

In addition to the costs associated with designing and producing the countermeasures needed to meet the proposed performance requirements, today's proposed rule would also result in some test equipment costs. NHTSA estimates the cost of a new FMH at $2840 to $2970, and the cost of a propulsion unit to launch the FMH at $30,000 to $35,000.

There are also costs associated with calibrating the FMH, purchasing replacement parts, instrumentation, and performing tests. The agency estimates total testing costs for a particular model at between $1485 and $3165. On a per vehicle basis, the testing costs are negligible.

IX. Benefits

As discussed above, NHTSA has conducted tests of 15 production vehicles, nine passenger cars and six LTV's, using the test conditions and FMH proposed today. To evaluate the effects of meeting the two alternative performance proposals, HIC(d) 1000 and HIC(d) 800/1000, the agency analyzed

the probability of head injury for each of the vehicles in the tests using the HIC and compared this to the level of injury that would occur under each of the alternative proposals. Based on the assumption that the production vehicles tested by NHTSA are representative of the total fleets of new cars and LTV's, NHTSA calculated the estimated benefits of the two alternative performance proposals.

In estimating benefits, NHTSA assumed that all components exceeding the proposed maximum HIC(d) (1000 or 800) would be modified by adding the amount of padding (½ inch, 1 inch or 1½ inch) needed to reduce HIC(d) below the specified level (1000 or 800) while all components having values less than the proposed maximum would not be modified. Thus, the modified components were assigned new, lower HIC values, while the unmodified components retained the original values. Injury distributions were then recalculated using the altered HIC(d) values. Results are shown in Table VII. The specific methodology for deriving these estimates is set forth in chapter IV of the PRIA.

TABLE VII.—REDUCTIONS IN MODERATE TO CRITICAL HEAD INJURIES/FATALITIES

	AIS 2–5	Fatal
Alternative 1—HIC 1000:		
Passenger cars	708 to 575	862 to 1,114.
LTV's	116 to 108	281 to 276.
Total	824 to 683	1,143 to 1,390.
Alternative 2—HIC 800/1000:		
Passenger cars	572 to 1,188	1,054 to 1,323.
LTV's	269 to 290	311 to 291.
Total	841 to 1,478	1,365 to 1,614.

X. Leadtime; Effective Date

In its rulemaking establishing dynamic side impact requirements for passenger cars, NHTSA addressed the leadtime associated with padding countermeasures. The agency estimated that, for vehicles needing "padding only" countermeasures, the normal leadtime to design, tool and test such things as new interior trim panels and armrests is approximately 14 to 18 months. The agency recognized that greater leadtime would be required for countermeasures involving structure and padding. See 55 FR 45722, 45748, October 30, 1990.

NHTSA believes that its estimate of 14 to 18 months normal leadtime for padding countermeasures is an appropriate starting point for considering the leadtime needed for this rulemaking. Given this required leadtime, the agency believes that, if a single effective date were established for full implementation of the proposed requirements, the earliest possible date would be the first September 1 approximately two years after issuance of a final rule.

It is possible that somewhat longer leadtime could be required for this rulemaking. First, since the requirements would apply to both passenger cars and LTV's, a very large number of models could require changes. In addition, a large number of structures in each model could require changes. Manufacturers have limited engineering resources and testing facilities, which cannot be used simultaneously for all models. Second, manufacturers may adopt countermeasures other than padding for some vehicles. Therefore, NHTSA is also considering a later effective date, the first September 1 approximately three years after issuance of a final rule.

The agency also seeks comments on whether a phase-in, starting one to two years after issuance of a final rule, would be more acceptable. If so, comments are sought on the length of the phase-in and the percentages of a manufacturer's fleet to be affected each year. The agency contemplates that, if it were to adopt a phase-in, it would establish reporting and rcordkeeping requirements similar to those adopted for the phase-in of the dynamic side impact requirements for passenger cars. See 55 FR 45768, October 30, 1990.

XI. Effect on Visibility

Several commenters on the ANPRM expressed concern that the addition of padding to a vehicle's pillars could obscure the driver's field of view and create a safety risk. NHTSA is aware that it has long been a concern that padding the A-pillar on the driver's side of the vehicle could affect the forward vision obscuration angle of that pillar. Since the A-pillar on the passenger's side is much farther away, it is less likely to create a problem. The agency does not believe that padding the front and rear headers, side roof rails, other pillars or roof areas raise issues relating to obscuring forward vision.

This issue is not an easy one to analyze because of a general lack of specific, objective forward visibility requirements or recommendations. In 1988, the European Economic Community (EEC) proposed that the angle of binocular obscuration (as viewed with both eyes) of each A-pillar should not exceed six degrees. While this proposal was recently withdrawn because of lack of support, the agency believes it can be used to help analyze this issue.

The Department of Transportation's Volpe National Transportation Systems Center (VNTSC) conducted a study using data from 16 recent passenger car models to (1) determine how much padding can be added to A-pillars without increasing the obscuration of the field of view and (2) compute the binocular obscuration according to the EEC procedure. The study showed that each vehicle had a blind envelope area in the center of the A-pillar surface where padding could be added without obstructing the driver's view. NHTSA notes that it is generally not necessary to add padding to the areas of the A-pillar surface that are immediately adjacent to the windshield, since the FMH cannot impact those areas without interference. Thus, the blind area in which padding can be added generally coincides with the area that is subject to HIC(d) limits.

The EEC binocular obstruction angle was computed using both baseline and padded A-pillars. A 1-inch thick padding was added on top of the A-pillar trim surface starting with the A-pillar/door frame intersection and covering a 50 degree segment. Twelve of the 16 vehicles would meet the EEC's proposed six degree specification with or without padding. The other four vehicles were above six degrees in both cases.

Two vehicles did show a large increase (50 percent) in forward obscuration angles when padding was added to their A-pillars. However, NHTSA believes that tapered padding could be used to solve this problem. Since the FMH could not strike the areas of the A-pillar that are immediately adjacent to the windshield, padding could be used which is relatively thick in the middle and tapered toward the windshield.

The agency notes that the VNTSC study showed "worst case" results. First, padding was added directly on top of the existing trim. Manufacturers can, however, remove trim and replace it with padding that is directly applied to a substrate material which is designed to be congruent with the A-pillar structure, or integrate the energy-absorbing material and the support structure design. Second, lesser thicknesses of padding could have been applied, depending on a vehicle's baseline performance. Third, tapered padding can be used in many instances.

NHTSA has tentatively concluded that padding of at least 1 inch in thickness could be carefully designed, shaped, constructed and installed so that it would not have a significant effect on the driver's forward field of vision. Further, manufacturers are likely to develop "clean sheet" designs that integrate structure and padding, thus diminishing the possible problems. Also, the areas of "opaque coatings" used around the perimeter of current windshields could accommodate a certain thickness of padding so that the padding has no effect on visibility. The agency invites comments on these tentative conclusions.

XII. Consumer Reaction to Padding

The addition of padding to a vehicle's upper interior components could result in consumer acceptance problems if it either reduced driver visibility or otherwise interfered with the driving task or occupant comfort. For the reasons discussed in the preceding section, the agency does not believe that the addition of padding of at least 1 inch in thickness will create visibility problems.

In its rulemaking to establish dynamic side impact requirements for passenger cars, NHTSA reported the results of a study conducted to evaluate consumer reaction to side door padding. Based on the results of that study, the agency concluded that the majority of the population in smaller than average cars would be able to drive normally and ride in comfort with up to 3 inches of additional side door padding, and that consumers would accept the concept of such increased side door padding.

While the agency does not have a similar study concerning the addition of padding to upper interior components, it sees no reason why consumers would not accept such additional padding unless it affected their ability to drive normally and ride in comfort. NHTSA believes that the addition of 1 inch or 1½ inch padding to the upper interior components would have only a negligible effect on occupant space and would not affect the ability of a majority of the population in smaller than average cars to be able to drive normally and ride in comfort. It is possible, for a very small number of tall drivers who already find it difficult to drive and ride in smaller than average cars, that the addition of any amount of padding could exacerbate that difficulty. The agency notes, however, as it did in the preceding section, that manufacturers are likely to develop "clean sheet" designs that integrate structure and padding, thus diminishing any possible problem. The agency invites comments on this issue.

XIII. Risk of Neck Injury

Commenters on the ANPRM expressed concern that the addition of padding might increase neck injuries by allowing pocketing of the head and thereby generating increased neck loads. In light of this concern, NHTSA examined the results of 19 paired sets of sled tests (baseline and padded) using a Hybrid III dummy with an upper neck load cell. The agency looked at shear force, XY moment, and axial force, which were recorded by the upper neck load cell. The agency also looked at maximum neck rotation, estimated from test films. Finally, the agency looked at combined shear and axial force, XY moment, rotation, and XYZ resultant force.

Since there is no established neck injury criterion to determine what level of neck response translates into injuries, the agency examined the direction of each of the measured neck responses to determine whether the addition of padding directionally increased or decreased the severity of the measurements. For each of the responses examined by the agency, with the exception of shear force, the responses either decreased in severity or were essentially unchanged in between 69 and 90 percent of the tests. For shear force, the impact of padding on neck response was mixed, with about as many cases with padding where the responses increased (32 percent) as decreased (26 percent).

NHTSA has tentatively concluded that the addition of padding will not generally increase the risk of neck injury. The agency invites comments on this tentative conclusion.

XIV. Final Stage Manufacturers

There is a specialized class of small businesses involved in the final stage manufacture of vehicles manufactured in two or more stages, and/or in the conversion or alteration of completed, previously certified new vehicles. Final stage manufacturers and alterers purchase pickup truck cab-chassis or finished pickups and add equipment for special purposes, such as towing equipment and dump truck bodies; cutaway vans to make van boxes, motor homes, or other vehicles; finished vans or vans without seats for van conversions; and stripped chassis to make motor homes and many other special types of vehicles.

Under NHTSA's certification regulations, a final stage manufacturer must certify that the completed vehicle conforms to all applicable safety standards. Additionally, a business that modifies or converts a previously certified new vehicle before its first sale to a consumer is a vehicle alterer under the agency's regulations. Alterers are required to certify that the altered vehicle continues to comply with all applicable Federal motor vehicle safety standards. Throughout the rest of this preamble, the term "final stage manufacturer" is used to refer to both final stage manufacturers and alterers.

NHTSA's regulations require the manufacturers of truck or van chassis used by final stage manufacturers to provide information on what limitations must be observed for the completed vehicle to comply with safety standards. The final stage manufacturer can then base its certification on the fact that it stayed within the limits set by the incomplete vehicle manufacturer.

For the requirements proposed by this NPRM, to the extent that a final stage manufacturer does not make changes or additions to a vehicle that affect the upper interior components, it could base its certification on the fact that it stayed within the limits set by the incomplete vehicle manufacturer. In many cases, however, final stage manufacturers do make changes or additions that affect the upper interior components. In these cases, the final stage manufacturers would need to make any necessary design changes, such as adding padding, to enable them to certify that the vehicle complies with Standard No. 201.

Even where final stage manufacturers need to make design changes, NHTSA

does not believe that the proposed requirements would be burdensome. Since the agency is proposing a component test, a final stage manufacturer could test, or sponsor a test, of a padded component outside the vehicle on a test fixture, to the extent such testing may be needed to support certification. As discussed in the PRIA, the costs to run eight such tests, which might be typical of the number needed for most vehicles, would be about $840. To reduce certification costs, manufacturer associations could also sponsor generic tests to determine the amount and type of padding needed for basic structures that would be used by a number of final stage manufacturers.

XV. International Harmonization

Several commenters, particularly import manufacturers, urged NHTSA to base its head impact protection requirements on Europe's Regulation 21. That regulation defines head impact areas and specifies performance requirements that necessitate the use of energy-absorbing materials in those zones. The performance requirements include ones prescribing g levels in impacts using a hemispherical test device.

NHTSA does not consider the European approach to be a substitute for this rulemaking. Many of the upper interior components being specified in this proposal are not included in Regulation 21. Moreover, the agency believes that performance requirements prescribing g levels in impacts using a hemispherical test device are less likely to ensure appropriate head impact protection than ones specifying HIC limits in a test procedure using an FMH based on the Hybrid III dummy head.

XVI. Amending Existing Requirements of Standard No. 201

As indicated above, Standard No. 201 currently specifies requirements for the instrument panel, seat backs, interior compartment doors (such as the door of a glove box), sun visors, and armrests. For several of these items, the standard specifies an acceleration limit when the item is impacted by a 15-pound 6.5-inch diameter headform. NHTSA requests comments on whether the standard's existing impact test requirements should be replaced by ones along the lines being proposed for the upper interior components, e.g., a limit of HIC(d) 1000 when the item is impacted by the FMH. Depending on the comments, the agency may adopt such a change in a final rule.

The agency also requests comments on whether the existing requirements for sun visors should be retained, since sun visors would generally be tested as part of the front header impact zone under the requirements being proposed today. If the agency decides not to retain those requirements, should front header impact zone be defined to include all sun visors, including ones which might be mounted in other areas?

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

XVII. Rulemaking Analyses and Notices

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Polices and Procedures

NHTSA has considered the impacts of this rulemaking action and determined that it is major within the meaning of Executive Order 12291, and significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a Preliminary Regulatory Impact Analysis describing the economic and other effects of this rulemaking action. Summary discussions of many of those effects are provided above. For persons wishing to examine the full analysis, a copy is being placed in the docket.

B. Regulatory Flexibility Act

NHTSA has also 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. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

The primary cost effect of the proposed requirements would be on manufacturers of passenger cars and LTV's. Final stage manufacturers are generally small businesses. In many cases, these companies would need to make design changes, such as adding padding, to enable them to certify that a vehicle complies with Standard No. 201. However, NHTSA believes that the proposed requirements would not be burdensome for final stage manufacturers. The costs of adding padding are not large. Further, since the agency is proposing a component test, a final stage manufacturer could test, or sponsor a test, of a padded component outside of the vehicle on a test fixture, to the extent such testing may be needed to support certification. Manufacturer associations could also sponsor generic tests to determine the amount and type of padding needed for basic structures that would be used by a number of final stage manufacturers, to reduce certification costs.

Other entities which would qualify as small businesses, small organizations and governmental units would be affected by this rule to the extent that they purchase passenger cars and LTV's. They will not be significantly affected, since the potential cost increases associated with this action should only slightly affect the purchase price of new motor vehicles.

C. 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.

D. Executive Order 12612 (Federalism)

The agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

XVIII. Submission of Comments

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

49 CFR Part 571

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

49 CFR Part 572

Incorporation by reference, Motor vehicle safety.

In consideration of the foregoing, 49 CFR parts 571 and 572 would be amended as follows:

PART 571—[AMENDED]

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.

2. Section 571.201 would be amended by revising S3 and by adding S2.1 and S4 through S7.3 to read as follows:

§ 571.201 Standard No. 201, Occupant protection in interior impact.

* * * *

S2.1 *Definitions.*

A-pillar means any pillar that is, in whole or part, forward of a transverse vertical plane passing through the seating reference point of the driver's seat.

Forehead impact zone means a part of the free motion headform surface area that is determined in accordance with the procedure set forth in S6.8 through S6.8.6.

Free motion headform means a test device which conforms to the specifications of part 572, subpart L of this chapter.

Front header means any structure or component, other than glazing, which is along the front of the upper interior compartment and is above the windshield, including but not limited to the horizontal beam structure, sun visors, overhead consoles, and accompanying molding at the edge of the roof along the top of the windshield.

Front header impact zone means those parts of the vehicle interior surface along or above the front header, that are within the area from the line where the windshield glazing meets the header to the line formed by the intersection between the upper limit horizontal plane and the vehicle interior surface.

Pillar means any structure other than glazing, including accompanying moldings, attached components such as safety belt anchorages and coat hooks, and the vertical portion of door frames, which:

(1) Supports either a roof or any other structure (such as a roll bar) that is higher than the driver's head, or

(2) Is located along the side edge of a window or between two windows.

Pillar impact zone means those parts of the vehicle interior surface along or above each pillar, that are within any of the following areas:

(1) The entire interior surface of each pillar, from the lowest level of any adjacent daylight opening or, if there is no adjacent daylight opening, from the lowest level of the nearest daylight opening, but in no instance less than six inches (152.4 mm) above the driver's seating reference point;

(2) The vehicle interior surface immediately above the pillar that is between the adjacent header and/or side rail impact zones.

Rear header means any structure or component, other than glazing, which is along the rear of the upper interior compartment and is between and/or supported by pillars, including but not limited to the horizontal beam structure and accompanying molding and attached components at the edge of the roof along the top of the back window.

Rear header impact zone means those parts of the vehicle interior surface along or above the rear header, that are within the area from the line where the rear window glazing meets the header to the line formed by the intersection between the upper limit horizontal plane and the vehicle interior surface.

Side rail means any structure or component, other than glazing, along either side of the vehicle which is supported by pillars, including but not limited to the horizontal beam structure at each edge of the roof, accompanying moldings and attached components, and the horizontal portion of door frames.

Side rail impact zone means those parts of the vehicle interior surface along or above each side rail, that are within any of the following areas:

(1) The area from the line where the glazing meets the side rail to the line formed by the intersection between the upper limit horizontal plane and the vehicle interior surface;

(2) For side rails that are not above glazing, the area from the lowest portion of the side rail to the line formed by the intersection between the upper limit horizontal plane and the vehicle interior surface.

Upper roof zone plane means a horizontal plane passing through a point 0.5 inch (12.7 mm) below the highest point of the vehicle roof interior.

Upper roof impact zone means any part of the vehicle interior surface, other than glazing, that is above the upper roof zone plane.

S3. Each vehicle shall meet the requirements specified in S3.1 through S3.5.2. Each vehicle manufactured on or after September 1, [the year of the effective date would be inserted in a final rule] shall, in addition, meet the requirements specified in S4 through S7.3.

* * * * *

S4. *Free motion headform test requirements.*

S4.1 Subject to S4.2, when tested under the conditions of S6, each vehicle shall meet the requirements of S5 when any portion of the front header impact zone, rear header impact zone, the side rail impact zones, the pillar zones, and the upper roof impact zone is impacted by a free motion headform at any speed up to and including 15 miles per hour. If a portion of the vehicle comes with the definitions for more than one of these impact zones, it shall meet the specified requirements for each of those impact zones. The requirements do not apply to any area of the impact zones that cannot be tested under the conditions of S6.

Alternative One for S4.2

S4.2 A vehicle need not meet the requirements of S4.1 for—

(a) any part of the vehicle located rearward of a vertical transverse plane 36 inches (914.4 mm) behind the seating reference point of the vehicle's rearmost designated seating position.

(b) [Reserved]

Alternative Two for S4.2

S4.2 A vehicle need not meet the requirements of S4.1 for—

(a) in the case of passenger cars, any part of the vehicle located rearward of a vertical transverse plane 36 inches (914.4 mm) behind the seating reference point of the vehicle's rearmost designated seating position.

(b) in the case of trucks, buses, and multipurpose passenger vehicles, any part of the vehicle located rearward of a vertical transverse plane 36 inches (914.4 mm) behind the seating reference point of the designated seating position for the driver.

S5. The HIC(d) shall not exceed [two alternatives are being considered: 1000 for all impact zones, or 1000 for the front header, rear header and A-pillar impact zones, and 800 for the side rail, upper roof, and other pillar impact zones] when calculated in accordance with the following formula:

HIC(d) = 0.75446 (free motion headform HIC) + 166.4

The free motion headform HIC is calculated in accordance with the following formula:

$$\left[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2-t_1)$$

The term *a* is resultant acceleration expressed as a multiple of *g* (the acceleration of gravity), and t1 and t2 are any two points in time during the impact which are separated by not more than a 36 millisecond tie interval.

S6. *Test conditions.*

S6.1 *Vehicle test attitude.*

S6.1.1 The vehicle is supported off its suspension at an attitude determined in accordance with S6.1.2.

S6.1.2 Directly above each wheel opening, determine the vertical distance between a level surface and a standard reference point on the test vehicle's body under the following conditions. Each vehicle is loaded to its unloaded vehicle weight, plus its rated cargo and luggage capacity, secured in the luggage area. The load placed in the cargo area is centered over the longitudinal centerline of the vehicle. The vehicle is filled to 100 percent of all fluid capacities, and all tires are inflated to the manufacturer's specifications listed on the vehicle's tire placard.

S6.2 *Windows.* Movable vehicle windows are placed in any of the following positions: Fully open, fully closed.

S6.3 *Convertible tops.* The top, if any, of convertibles and open-body type vehicles is in the closed passenger compartment configuration.

S6.4 *Doors.* Doors, including any rear hatchback or tailgate, are fully closed and latched but not locked.

S6.5 *Sun visors.* Each sun visor is placed in any position where one side of the visor is in contact with the vehicle interior surface (windshield, side rail, front header, roof, etc.).

S6.6 *Steering wheel and seats.* The steering wheel and seats may be removed from the vehicle.

S6.7 *Headform.*

S6.7.1 The headform used for testing conforms to the specifications of part 572, subpart L of this chapter.

S6.7.2 The stablilized temperature of the headform at the time of a test is at any temperature between 66 °F. and 78 °F.

S6.8 *Determination of forehead impact zone.* The forehead impact zone of the headform is determined according to the procedure specified in S6.8.1 through S6.8.6.

S6.8.1 Position the headform so that the baseplate of the skull is horizontal. The midsagittal plane of the headform is designated as Plane S.

S6.8.2 From the center of the threaded hole on top of the headform, draw a 2.75 inch (69.85 mm) line forward toward the forehead, coincident with Plane S along the contour of the outer skin of the headform. The front end of the line is designated as Point P. From Point P, draw a 4.0 inch (101.6 mm) line forward toward the forehead, coincident with Plane S along the contour of the outer skin of the headform. The front end of the line is designated as Point O.

S6.8.3 Draw a 5.0 inch (127 mm) line which is coincident with a horizontal plane along the contour of the outer skin of the forehead from left to right through Point O so that the line is bisected at Point O. The end of the line on the left side of the headform is designated as Point 1 and the end on the right as Point 2.

S6.8.4 Draw another 5.0 inch (127 mm) line which is coincident with a horizontal plane along the contour of the outer skin of the forehead through Point P so that the line is bisected at Point P. The end of the line on the left side of the headform is designated as Point 3 and the end on the right as Point 4.

S6.8.5 Draw a line from Point 1 to Point 3 along the contour of the outer skin of the headform using a flexible steel tape. Using the same method, draw a line from Point 2 to Point 4.

S6.8.6 The forehead impact zone is the rectangular area on the FMH forehead bounded by lines 1–O–2 and 3–P–4, and 1–3 and 2–4.

S6.9 *Marking of target circle.* The area of the vehicle to be impacted by the headform is marked with a solid circle 0.5 inch (12.7 mm) in diameter, using any transferable opaque coloring medium.

S6.10 *Impact configuration.*

S6.10.1 The headform is launched from any location inside the vehicle that is consistent with other test conditions. At the time of launch, the midsagittal plane of the headform is vertical.

S6.10.2 The headform travels freely through the air, along a velocity vector that is perpendicular to the headform's skull cap plate, not less than one inch before making any contact with the vehicle.

S6.10.3 At the time of initial contact between the headform and the vehicle interior surface—

(a) Some portion of the forehead impact zone of the headform contacts some portion of the target circle.

(b) No portion of the headform contacts any part of the vehicle outside the impact zones specified in S4.1.

S6.10.4 The direction of travel of the headform is within the limits specified in Table I, using the orthogonal reference system specified in S7.

TABLE I.—APPROACH ANGLE LIMITS

[In degrees]

Impact zones	Horizontal angle	Vertical angle
Front header	105 to 255	0 to 50.
Rear header	285 to 75	0 to 50.
Left side rail	195 to 345	0 to 50.
Right side rail	15 to 165	0 to 50.
Left A-pillar	195 to 255	0 to 50.
Right A-pillar	105 to 165	0 to 50.
Left pillars other than A-pillar.	195 to 345	0 to 50.
Right pillars other than A-pillar.	15 to 165	0 to 50.
Upper roof	Any	Any.

S6.11 *Multiple impacts.* A vehicle being tested may be impacted multiple times. However, successive impacts are at least 30 minutes apart. In addition, no impact is closer than six inches, in any direction, to a prior impact. The six-inch distance is measured, in the case of a prior test which conformed to S6.10.3, from the center of the target circle for that test to the center of the target circle for the new test. If a prior test did not conform to S6.10.3 (e.g., because the headform missed the target circle), the six-inch distance is measured from the center portion of the

area of actual initial contact in that test between the headform and the vehicle to the center of the target circle for the new test.

S7. The test conditions in S6.10.4 concerning the direction of approach of the headform are expressed in terms of ranges of horizontal and vertical angles, using the reference system specified in S7.1 through S7.3.

S7.1 An orthogonal reference system consisting of X, Y and Z axes is used to define the direction of approach of the headform. The origin of the reference system is the center of gravity of the headform at the time immediately prior to launch for each test. The X–Z plane is the vertical longitudinal zero plane and is parallel to the longitudinal centerline of the vehicle. The X–Y plane is the horizontal zero plane parallel to the ground. The Y–Z plane is the vertical transverse zero plane that is perpendicular to the X–Y and Y–Z planes. The X coordinate is negative forward of the Y–Z plane and positive to the rear. The Y coordinate is negative to the left of the X–Z plane and positive to the right. The Z coordinate is negative below the X–Y plane and positive above it. (See Figure 1.)

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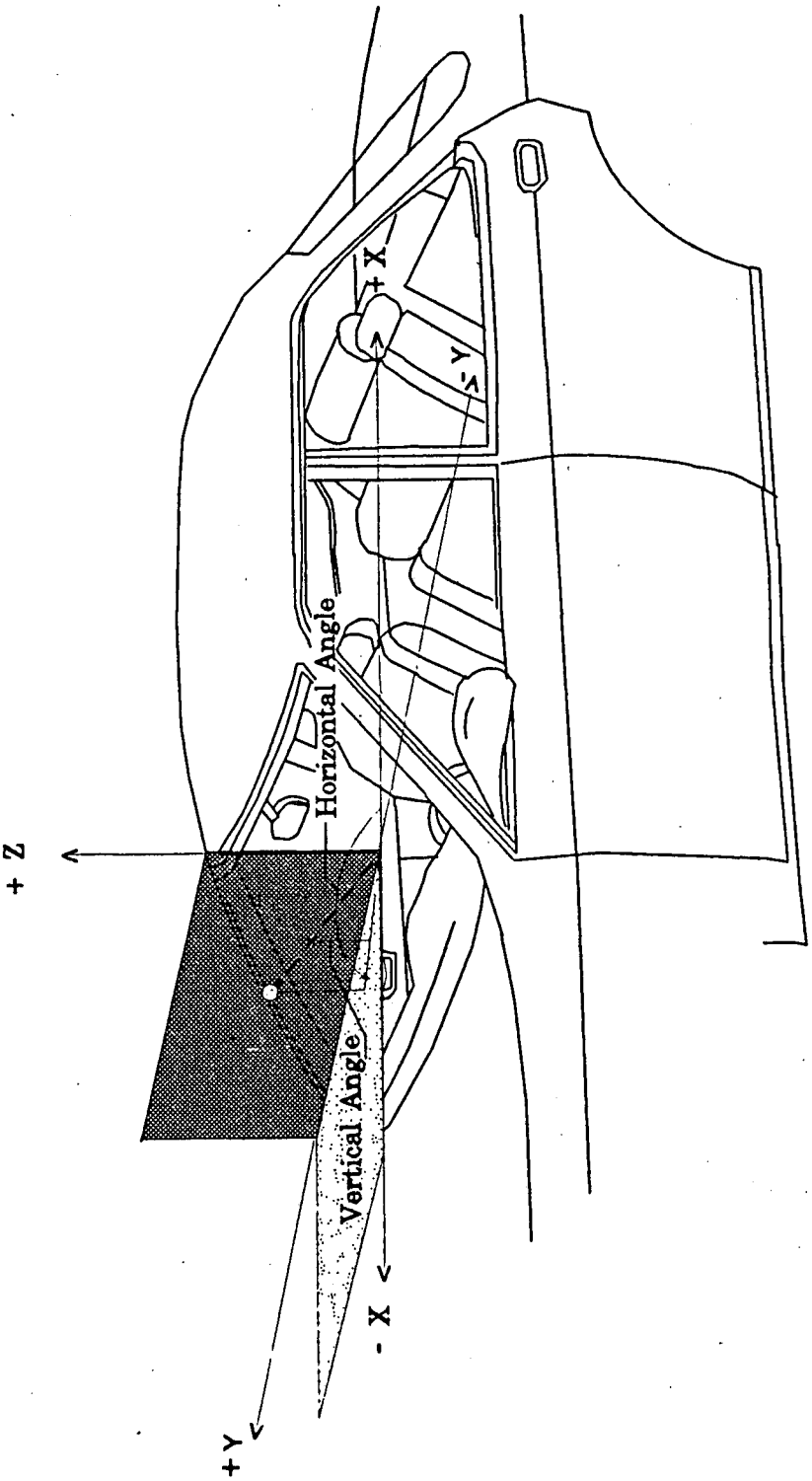

FIGURE 1 -- ORTHOGONAL REFERENCE SYSTEM

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S7.2 The horizontal approach angle is the angle between the X axis and the headform impact velocity vector projected onto the horizontal zero plane, measured in the horizontal zero plane in the counter-clockwise direction. A 0 degree horizontal vector and a 360 degree horizontal vector point in the positive X direction; a 90 degree horizontal vector points in the positive Y direction; a 180 degree horizontal vector points in the negative X direction; and a 270 horizontal degree vector points in the negative Y direction. (See Figure 1.)

S7.3 The vertical approach angle is the angle between the horizontal plane and the velocity vector, measured in the midsagittal plane of the headform. A 0 degree vertical vector in Table I coincides with the horizontal plane and a 50 degree vertical vector in Table I makes a 50 degree upward angle with that plane.

PART 572—ANTHROPOMORPHIC TEST DEVICES

3. The authority citation for part 572 would continue to read as follows:

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

4. The title of part 572 would be revised to read as set forth above.

5. Section 572.1 would be revised to read as follows:

§ 572.1 Scope.

This part describes the anthropomorphic test devices that are to be used for compliance testing of motor vehicles and motor vehicle equipment with motor vehicle safety standards.

6. A new subpart L, consisting of §§ 572.100 through 572.103, would be added to read as follows:

Subpart L—Free Motion Headform

Sec.
572.100 Incorporated materials.
572.101 General description.
572.102 Drop test.
572.103 Test conditions and instrumentation.

Subpart L—Free Motion Headform

§ 572.100 Incorporated materials.

(a) The drawings and specifications referred to in this regulation that are not set forth in full are hereby incorporated in this part by reference. These materials are thereby made part of this regulation. The Director of the Federal Register has approved the materials incorporated by reference. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation is incorporated. A notice of any change will be published in the **Federal Register.** As a convenience to the reader, the materials incorporated by reference are listed in the Finding Aid Table found at the end of this volume of the Code of Federal Regulations.

(b) The drawings and specifications incorporated in this part by reference are available for examination in the general reference section of Docket 92–28, Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. Copies may be obtained from Rowley-Scher Reprographics, Inc., 1111 14th Street NW., Washington, DC 20005, telephone (202) 628–6667 or (202) 408–8789. The drawings and specifications are also on file in the reference library of the Office of the Federal Register, National Archives and Records Administration, Washington, DC.

§ 572.101 General description.

(a) The free motion headform consists of the component assembly which is shown in drawing 92041–001, and shall conform to each of the drawings subtended therein (incorporated by reference; see § 572.100).

(b) Disassembly, inspection, and assembly procedures, and sign convention for the signal outputs of the free motion headform accelerometers, are set forth in the Free Motion Headform User's Manual (incorporated by reference; see § 572.100).

(c) The structural properties of the headform are such that it conforms to this part in every respect both before and after being used in the vehicle test specified in Standard No. 201 of this chapter (§ 571.201).

§ 572.102 Drop test.

(a) When the headform is dropped from a height of 14.8 inches in accordance with paragraph (b) of this section, the peak resultant accelerations at the location of the accelerometers mounted in the head in accordance with § 572.101 shall not be less than 225g, and not more than 275g. The acceleration/time curve for the test shall be unimodal to the extent that oscillations occurring after the main acceleration pulse are less than ten percent (zero to peak) of the main pulse. The lateral acceleration vector shall not exceed 15g (zero to peak).

(b) *Test procedure.*

(1) Soak the headform in a test environment at any temperature between 66 degrees F to 78 degrees F and at a relative humidity from 10 percent to 70 percent for a period of at least four hours prior to its use in a test.

(2) Clean the headform's skin surface and the surface of the impact plate with 1,1,1 Trichloroethane or equivalent.

(3) Suspend the headform, as shown in Figure 50. Position the forehead below the chin such that the skull cap plate is at an angle of 28.5±0.5 degrees with the impact surface when the midsagittal plane is vertical.

(4) Drop the headform from the specified height by means that ensure instant release into a rigidly supported flat horizontal steel plate, which is 2 inches thick and 2 feet square. The plate shall have a clean, dry surface and any microfinish of not less than 8 microinches 203.2×10^{-6} mm (rms) and not more than 80 microinches 2032×10^{-6} mm (rms).

(5) Allow at least 3 hours between successive tests on the same headform.

§ 572.103 Test conditions and instrumentation.

(a) Headform accelerometers shall have dimensions, response characteristics, and sensitive mass locations specified in drawing SA–572 S4 and be mounted in the headform as shown in drawing 92041–001.

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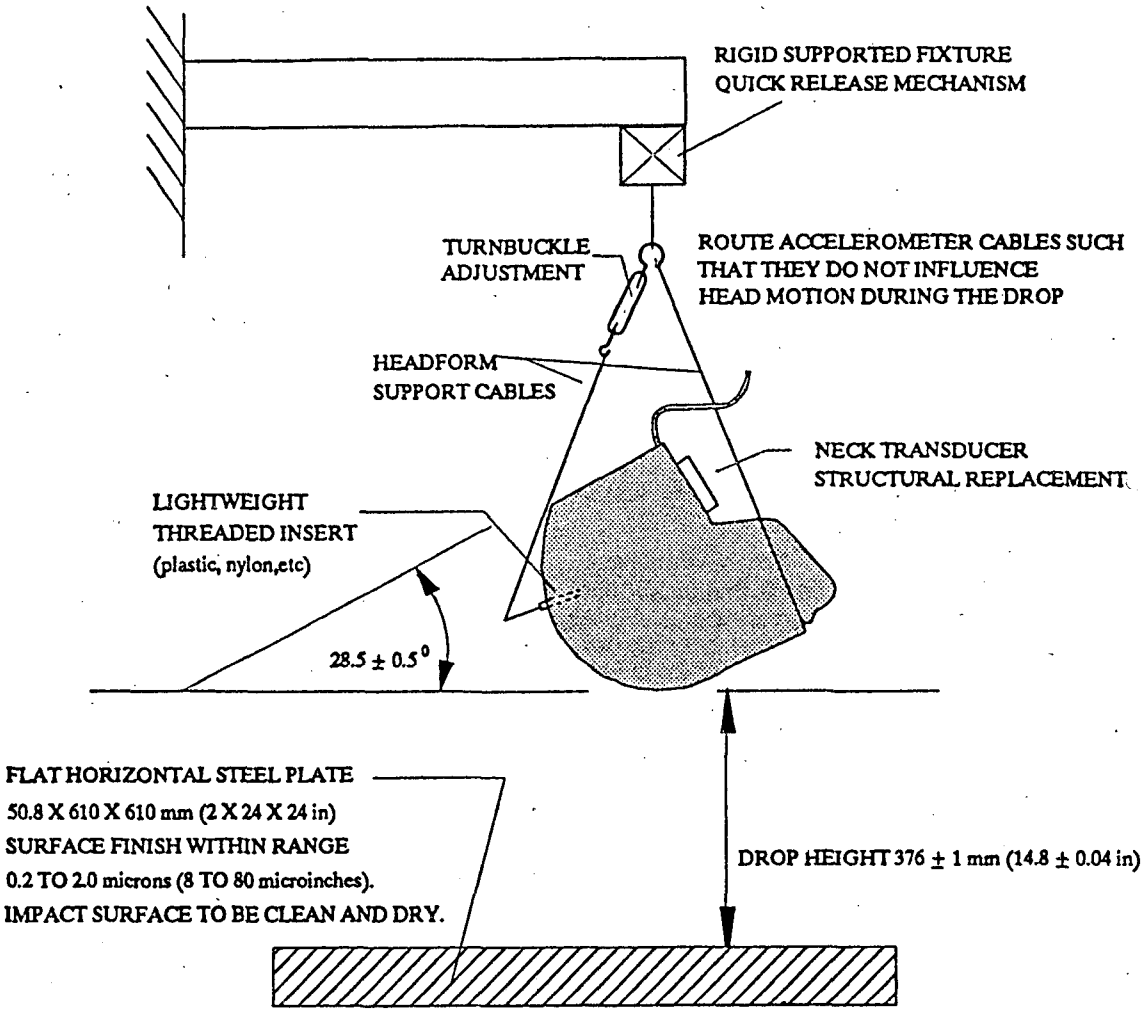
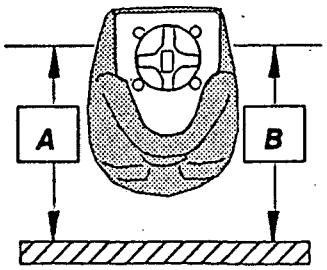
Figure 50

HEADFORM DROP TEST
Set-up Specifications





CENTERLINE OF 1.6 mm (0.062 in) DIAMETER HOLES IN SKULL

DISTANCE "A" = DISTANCE "B" (± 1 mm, ± 0.04 in)

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(b) The outputs of accelerometers installed in the headform are recorded in individual data channels that conform to the requirements of SAE Recommended Practice J211, Oct 1988, "Instrumentation for Impact Tests," Class 1000.

(c) Coordinate signs for instrumentation polarity conform to the sign convention shown in the document incorporated by § 572.101(b).

(d) The mountings for accelerometers shall have no resonant frequency within a range of 3 times the frequency range of the applicable channel class.

(e) Surfaces of the headform are not painted except as specified in this part or in drawings subtended by this part.

Issued on February 1, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-2779 Filed 2-2-93; 4:33 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 930223-3023]

RIN 0648-AE93

Pacific Coast Groundfish Fishery

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

ACTION: Proposed rule.

SUMMARY: The Department of Commerce requests public comments on a proposed rule to implement Amendment 7 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 7, upon which public comment has previously been requested, would, if approved by the Secretary of Commerce, authorize the imposition of management measures on the Pacific Coast groundfish fishery to reduce the bycatch of salmon and other non-groundfish species. Under Amendment 7, regulations could be issued to reduce mortality of non-groundfish species when a conservation problem has been identified or in response to the requirements of the Endangered Species Act (ESA) or other applicable law.

DATES: Written comments on Amendment 7 and the proposed rule must be received on or before March 22, 1993.

ADDRESSES: Comments should be sent to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070, or Dr. Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802-4213. Copies of the environmental assessment/regulatory impact review may be obtained from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW First Avenue, Portland, OR 97201-5344.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, Rodney R. McInnis at 310-980-4040, or Lawrence D. Six at 503-326-6352.

SUPPLEMENTARY INFORMATION: The domestic groundfish fishery in the Exclusive Economic Zone of the United States (3 to 200 miles offshore) in the Pacific Ocean off the coasts of California, Oregon, and Washington is managed under the FMP. The FMP was developed by the Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act), and approved by the Secretary of Commerce (Secretary). Implementing regulations appear at 50 CFR part 663.

The Council prepared Amendment 7 to the FMP under the provisions of the Magnuson Act and formal review by the Secretary began on December 22, 1992. A notice announcing the availability of Amendment 7 and requesting public comments was filed with the Office of the Federal Register on January 7, 1993 (58 FR 4146, January 13, 1993).

The FMP amendment process for Amendment 7 was initiated at the July 8-10, 1992, Council meeting to address the lack of authority in the FMP to regulate groundfish fishing activities for the purposes of reducing the bycatch of non-groundfish species or meeting the requirements of the ESA or other applicable law. At this meeting the Council recommended alternatives for analysis. Further Council discussions were conducted at its September 15-18, 1992, meeting. A draft amendment was prepared and distributed to interested persons for review on October 27, 1992. Comments were invited, and a public hearing was held on November 9, 1992, in Eureka, California (57 FR 48510, October 26, 1992).

After considering the comments received on the draft amendment at the public hearing and Council meetings, and from its Groundfish Management Team, Groundfish Advisory Subpanel, and Scientific and Statistical Committee, the Council, at its November 17-20, 1992, meeting, made its final selection of the preferred alternative which would alter the status quo and require regulatory changes to the appendix to 50 CFR part 663.

The purpose of Amendment 7 is to authorize the imposition of management measures for reducing the bycatch of non-groundfish species. Such measures could be applied to the entire groundfish fishery or any segment of the fishery The Council has already demonstrated the need for such measures. At its March 9-13, 1992, meeting, the Council recommended management restrictions for the Pacific whiting fishery with the intent of minimizing that fishery's impact on Pacific salmon stocks, particularly Sacramento River winter-run chinook salmon and Klamath River fall chinook salmon. Lacking the authority in the FMP to implement these restrictions, the Council requested the Secretary implement emergency regulations which were effective for 90 days beginning April 16, 1992 (57 FR 14663, April 22, 1992), then extended for a second 90-day period ending October 19, 1992 (57 FR 32924, July 24, 1992). At its November 17-20, 1992, meeting, the Council recommended similar management restrictions for the Pacific whiting fishery in 1993. Because emergency rules are not intended to address issues that are likely to persist from year to year, as is the case with salmon bycatch in the Pacific whiting fishery, the Council initiated the FMP amendment process.

At present there are adequate data only to support management measures for the Pacific whiting fishery. In developing Amendment 7, the Council considered two alternatives to address the problem of non-groundfish bycatch: limited authority applicable only to the Pacific whiting fishery, or the generic authority to manage any segment or all of the groundfish fishery. The Council concluded that the management authority should be broad enough to authorize actions for any segment of the groundfish fishery. The Council also concluded that such authority is necessary to provide timely response to requirements under applicable law, such as to ensure groundfish operations will not likely jeopardize a non-groundfish species listed as threatened or endangered under the ESA.

NMFS issued a biological opinion under the ESA on August 28, 1992, on the impacts of fishing conducted under the FMP on Sacramento River winter-run chinook salmon and Snake River sockeye and spring/summer chinook salmon. The incidental take statement in the biological opinion requires the prohibition of targeted harvest of Pacific

whiting shoreward of 100 fathoms in the Eureka area. Therefore, the Council recommended Amendment 7 in order to allow the Council and NMFS to develop regulations that are consistent with the biological opinion without requiring an FMP amendment or emergency regulations.

The amendment would add a new management objective under the conservation goal and establish a regulatory process (framework) to recommend specific management measures. The Council could begin at any time the process of establishing or adjusting management measures to reduce fishing mortality of a non-groundfish species when a conservation concern has been identified for that species and the best scientific information has shown the groundfish fishery has a direct impact on the ability of that species to maintain its long-term reproductive health. The Council would then review the information and refer it to appropriate technical advisory groups for evaluation. If the Council were to determine, based on this review, that management measures might be necessary to respond to conservation problems facing a non-groundfish species, or to address requirements of the ESA, Marine Mammal Protection Act, other relevant Federal natural resource law or policy, or international agreement, such measures could be recommended to the Regional Director of NMFS. If approved, the measures would be implemented in accordance with existing procedures. Some measures could be designated as "routine" which would allow adjustment at a single Council meeting (see section III.B.(a) of the appendix to 50 CFR part 663).

Actions taken under this new authority would be designed to minimize disruption to the groundfish fishery and not preclude achievement of a quota, harvest guideline, or allocation of groundfish, consistent with the goal to minimize bycatch or the requirements of other applicable law. Amendment 7 would not authorize management measures whose primary purpose would be to allocate catch among gear types or fishermen or to achieve other allocation objectives.

The Council considered comments by groundfish fishing representatives who recommended that management measures be considered under the new authority only if the groundfish fishery had caused or significantly contributed to the conservation problems facing a non-groundfish species. The Council rejected this recommendation because all contributors to a problem must share in the burden of its solution. However, to guard against measures being imposed that would not help obtain a solution, the Council incorporated language in the amendment to ensure that any management measures imposed on the fishery have a measurable effect on the ability of the non-groundfish species to maintain its long-term reproductive health. In doing this, the Council recognized that in many, and perhaps most, cases, it would be impossible to quantitatively demonstrate such an effect, and in such cases a qualitative assessment would suffice.

Amendment 7 would require changes to the regulatory language in the appendix to 50 CFR part 663. While the amendment itself would not impose any specific management measures, the Council has recommended the imposition of specific measures for the Pacific whiting fishery in 1993 under the amendment.

Classification

Section 304(a)(1)(D) of the Magnuson Act, as amended, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment for this amendment that concludes there will be no significant impact on the environment as a result of this rule. The environmental assessment has been incorporated in the Amendment 7 document and may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination was based on the regulatory impact review prepared by the Council that demonstrates that the rule will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete in domestic or export markets. No quantitative estimate of economic impacts is possible since no management measures are proposed by this action. The impacts of any specific regulations implemented under the proposed authority will be analyzed as part of the implementation process. The regulatory impact review has been incorporated in the Amendment 7 document and may be obtained from the Council (see **ADDRESSES**).

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended, require that this proposed rule be published 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order. Because it is subject to a statutory deadline, this proposed rule is not subject to the regulatory review requirements of the January 22, 1993, Memorandum for the Heads and Acting Heads of Agencies described in Section 1(d) of Executive Order 12291 (58 FR 6074, January 25, 1993).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This certification is based on the regulatory impact review incorporated in the Amendment 7 document. Virtually no economic impacts would result from implementation of this rule since no management measures are proposed by this action. As a result, a regulatory flexibility analysis was not prepared.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of California, Oregon, and Washington. NMFS has submitted this determination for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

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

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

NMFS has issued biological opinions under the ESA on August 10, 1990, November 26, 1991, and August 28, 1992, regarding the impacts of the groundfish fisheries on the species being considered. The Assistant Administrator determined that current

groundfish operations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This action falls within the scope of those biological opinions.

The Regional Director determined that fishing activities conducted under this rule would have no adverse impacts on marine mammals.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: February 2, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 663 is proposed to be amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

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

2. The Appendix is amended by adding to the index a new entry for III.B.(d) to read "(d) Management Measures to Protect Non-Groundfish Species" and adding to the Appendix a new section III.B.(d) to read as follows:

Appendix to Part 663—Groundfish Management Procedures

* * * * *

III. * * *

B. * * *

(d) Management Measures to Protect Non-Groundfish Species

Where conservation problems have been identified for non-groundfish species and the best scientific information shows that the groundfish fishery has a direct impact on the ability of that species to maintain its long-term reproductive health, the Council may recommend management measures to control the impacts of groundfish fishing on those species. If approved by the Regional Director, management measures may be imposed on the groundfish fishery to reduce fishing mortality of a non-groundfish species. Such measures shall be designed to minimize disruption of the groundfish fishery, and may not preclude achievement of a quota, harvest guideline, or allocation of groundfish, if any, unless such action is required by other applicable law. Allocation may not be the primary intention of any such management measure.

Section 6.1 of the FMP lists nine principal measures that have been most useful in controlling fishing mortality: Mesh size, landing limits and trip frequency limits, quotas, escape panels or ports, size limits, bag limits, time/area closures, other forms of effort control, and allocation. While actions taken under this section III.B.(d) are not limited to these measures, any of these measures may be employed to control fishing impacts on non-groundfish species when a conservation concern is clearly identified. The process for implementing and adjusting such measures may be initiated at any time. In addition, actions under this section III.B(d) may be designated as "routine" (see section III.B.(a)).

Generally, the Council will initiate an action under this section when a state or Federal resource management agency or the Council's Salmon Technical Team (STT) presents the Council with information substantiating its concern for a particular species. The Council will review the information and refer it to the Scientific and Statistical Committee, GMT, STT, or other appropriate technical advisory group for evaluation. If the Council determines, based on this review, that management measures are necessary to prevent harm to a non-groundfish species facing conservation problems to or address requirements of the Endangered Species Act, Marine Mammal Protection Act, other relevant Federal natural resource law or policy, or international agreement, it may recommend appropriate management measures. If approved by the Regional Director, the measures will be implemented in accordance with the procedures identified in section III.B. The intention of the measures may be to share conservation burdens while minimizing disruption of the groundfish fishery, but under no circumstances may the intention be simply to provide more fish to a different user group or to achieve other allocation objectives.

* * * * *

[FR Doc. 93–2867 Filed 2–3–93; 11.16 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 24
Monday, February 8, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the meeting of the Committee on Rulemaking of the Administrative Conference of the United States.

Committee on Rulemaking

Date: Monday, February 22, 1993
Time: 3:30 p.m.
Location: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).
Agenda: The Committee will meet to further discuss a report by Jerry Mashaw on ossification of the rulemaking process.
Contact: Kevin L. Jessar, 202–254–7020.

Attendance at the committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request. The contact person's mailing address is: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: 202–254–7020.

Dated: February 3, 1993.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 93–2994 Filed 2–5–93; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held February 24 & 25, 1993, in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems/peripherals or technology.

Agenda

Executive Session February 24, 9 a.m.–10 a.m.

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

General Session February 24, 10 a.m.–4 p.m.

2. Election of Chairmen.
3. Work plan for 1993.
4. Discussion of subcommittees in relation to work plan.
5. Discussion of disk drive controls.
6. Discussion on graphics equipment controls.
7. Discussion on assembly controls.

General Session February 25, 9 a.m.–12 p.m.

8. Clarification of CTP formula.
9. Changing the connectivity factor for Computing Elements (CEs) not sharing main memory.
10. Discussion on processors connected by a network.

Executive Session February 25, 1 p.m.–4 p.m.

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program 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 that 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, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, Technical Support Staff, ODAS/EA/BXA, room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW. Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: February 2, 1993.

Lee Ann Carpenter,

Acting Director, Technical Advisory Committee Unit.

[FR Doc. 93–2892 Filed 2–5–93; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 2–93]

Foreign-Trade Zone 2—New Orleans, LA; Application for Permanent Subzone, Equitable Shipyard Facility (Trinity Marine Group, Inc.), New Orleans, LA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Commissioners of the Port of New Orleans (the Port), grantee of FTZ 2, requesting permanent special-purpose subzone status at the Equitable Shipyard shipbuilding facility located in New Orleans, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade

Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 21, 1993.

The shipyard (38 acres/500 employees) is located on the Inner Harbor-Navigation Canal at 4325 France Road, New Orleans Parish, Louisiana. The facility, which is owned by the Port and operated by Trinity Marine Group, Inc. (TMG), Gulfport, Mississippi, is used in the construction, repair and conversion of commercial and military vessels for domestic and international customers. Foreign components used at the Equitable yard include propulsion nozzles, marine gear, switchboards, pump units, winches, alarm cable, and anchors.

The Board approved temporary subzone status for the shipyard in 1992 (Subzone 2G, Board Order 573, 57 FR 13695, 4–17–92) for a period ending April 1, 1994, for the purpose of completing construction of a vessel that was transferred from FTZ Subzone 92A in Escatawpa, Mississippi. This application requests authority for permanent subzone status at the shipyard, subject to the standard shipyard restriction which limits zone procedures in regard to steel mill products.

Zone procedures will help TMG reduce production costs and compete internationally for new contracts. Most of the foreign-sourced components are subject to duties, which range from 2.0 to 5.7 percent, while the finished products—oceangoing vessels—are duty free.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 9, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 26, 1993).

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

U.S. Department of Commerce District Office, 432 World Trade Center, 2 Canal Street, New Orleans, LA 71030.

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

Dated: January 26, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–2839 Filed 2–5–93; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 1–93]

Foreign-Trade Zone 61—San Juan, Puerto Rico; Application for Subzone; SmithKline Beecham Pharmaceutical Plant, Cidra, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of FTZ 61, requesting special-purpose subzone status for the pharmaceutical manufacturing facilities of the SmithKline Beecham Company (SBC) in Cidra, Puerto Rico, within the San Juan Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 15, 1993.

SBC's plant (500,000 square feet) is located at Road #172, Km. 9.1, 35 miles south of San Juan. The facilities (600 employees) are used to produce a wide range of pharmaceutical products including gastrointestinals, antibiotics, cardiovasculars, antihistamines, analgesics, arthritis medications, hematinics, and neurologicals.

Zone procedures would exempt SBC from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (3.4%–6.9%) with regard to two foreign ingredients: Nabumetone (duty rate—11 percent) and paroxetine (duty rate—6.9 percent). The application indicates that zone savings will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 9, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 26, 1993).

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

Office of the District Director, U.S. Department of Commerce, Room G–55, Federal Building, Chardon Avenue, San Juan, Puerto Rico 00918.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: January 26, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–2840 Filed 2–5–93; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–351–820, A–729–801]

Initiation of Antidumping Duty Investigations: Ferrosilicon From Brazil and Egypt

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

EFFECTIVE DATE: January 8, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1756.

INITIATION OF INVESTIGATIONS:

The Petitions

On January 12, 1993, we received petitions filed in proper form by AIMCOR, Alabama Silicon, Inc., American Alloys, Inc., Globe Metallurgical, Inc., Silicon Metaltech Inc., United Autoworkers of America Local 523, United Steelworkers of America Locals 12646, 2528, 5171 and 3081, and Oil, Chemical & Atomic Workers Local 389 (petitioners). In accordance with 19 CFR 353.12, the petitioners allege that ferrosilicon from Brazil and Egypt is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioners have stated that they have standing to file the petitions because they are interested parties, as defined under sections 771(9)(C) and 771(9)(D) of the Act, and because the petitions were filed on behalf of the U.S.

industry producing, manufacturing or reselling the like product subject to these investigations and on behalf of certified unions representing the employees of U.S. ferrosilicon producers. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Period of Investigation

The period of investigation is July 1, through December 31, 1992.

Scope of Investigations

The product covered by these investigations is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of these investigations. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing by weight not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

Brazil

Petitioners based their estimate of U.S. Price (USP) on the U.S. f.o.b. import value of ferrosilicon imported from Brazil in July, August, September and November 1992. Petitioners made no adjustments to the estimated USP. We have deducted from USP an amount for foreign inland freight based on information provided by petitioners from the public version of the Department's current administrative review of silicon metal from Brazil.

Petitioners based their estimate of foreign market value on three home market prices for comparable periods obtained during 1992, for subject merchandise sold by certain producers exporting to the United States. Petitioners have stated that one of the prices includes shipping and packing. Petitioners could not identify the costs associated with shipping and packing. However, we have deducted foreign inland freight on that specific sale based on information provided by petitioners from the public version of the Department's current administrative review of silicon metal from Brazil.

Petitioner alleged home market sales below cost of production (COP) with respect to the subject merchandise for all Brazilian producers and exporters named in the petition. These allegations are based on a comparison of home market prices for three foreign producers named in the petition with cost of production (COP). COP was based on the COP of an efficient producer, AIMCOR, one of the petitioners in this investigation. Adjustments were made for known differences in material costs and labor. We adjusted petitioners' calculation to correct a conversion factor used for two inputs. Constructed value was calculated in the same manner, however, we used 10 percent for general expenses and eight percent for profit, pursuant to section 773(e)(1)(B) of the Act. We did not add an amount for packing because petitioner stated that usually the merchandise is shipped in bulk in both markets, thereby incurring no packing costs.

The Department is initiating COP investigations for the three companies where petitioners provided company-specific home market prices, contingent on whether these companies become respondents in this investigation. The Department will not initiate a COP investigation for those companies and exporters where petitioners did not provide company-specific home market prices.

Egypt

Petitioners based their estimate of USP on the U.S. f.o.b. import value of ferrosilicon imported from Egypt in June 1992. Petitioners made no adjustments to the estimated USP.

Petitioners based their estimate of foreign market value on home market prices obtained during July through December, 1992, for subject merchandise sold by an Egyptian producer exporting to the United States. Petitioners made no adjustments to the estimated foreign market value because they stated that they were unable to obtain information regarding transportation and packing costs.

Based on a comparison of USPs, adjusted for foreign inland freight in Brazil, and foreign market value, petitioners allege dumping margins ranging from 13.07% to 23.45% for ferrosilicon from Brazil and 52.41% to 90.50% for Egypt.

Based on a comparison of USP and foreign market value based on CV, petitioners allege dumping margins ranging from 64.17% to 89.52% for ferrosilicon from Brazil. Based on adjustments made to material costs for two inputs and deletion of packing costs, the revised constructed value margins range from 24.43% to 34.73%.

Initiation of Investigations

We have examined the petitions on ferrosilicon from Brazil and Egypt and have found that the petitions meet the requirements of section 732(c) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of ferrosilicon from the above-referenced countries are being, or are likely to be, sold in the United States at less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade

Commission (ITC) of these actions and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by February 26, 1993, whether there is a reasonable indication that imports of ferrosilicon from Brazil and Egypt are materially injuring, or threaten material injury to, a U.S. industry. Any ITC determination which is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed to conclusion in accordance with the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: February 1, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2978 Filed 2-5-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-201-806]

Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From Mexico

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

ACTION: Final determination.

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Will Sjoberg or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482-3793.

Final Determination of Sales at Less Than Fair Value

We determine that steel wire rope from Mexico is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

The Department made a preliminary determination in this investigation on September 22, 1992 (57 FR 43704). On September 24, 1992, the respondent, Grupo Industrial Camesa, S.A. de C.V. ("Camesa"), requested that the Department disclose the calculations and methodology used in its preliminary determination. However, since the Department used best information available ("BIA") as the basis for its preliminary determination, there were no calculations or methodology to disclose. On October 1, 1992, the petitioner, The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, requested to participate in any public hearing that may be requested by the respondent. No public hearing was requested by respondent.

On October 2, 1992 the respondent requested a postponement of the final determination 60 days from November 30, 1992, until January 29, 1993. In its letter of October 6, 1992, the petitioner objected to the respondent's request for a postponement. On October 15, 1992, the respondent filed a letter defending its request for an extension. The Department saw no compelling reason to deny the respondent's request, and postponed the final determination until January 29, 1993 (57 FR 49455).

On November 10, 1992, the respondent and petitioner submitted case briefs. Petitioner filed a rebuttal brief on November 16, 1992.

Scope of Investigation

This investigation covers imports of steel wire rope from Mexico. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Excluded from these investigations is stainless steel wire rope, i.e., ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under Harmonized Tariff Schedule ("HTS") subheading 7312.10.6000.

Imports of these products are currently classifiable under the following HTS subheadings: 7312.10.9030, 7312.10.9060 and 7312.10.9090. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these proceedings remains dispositive.

Period of Investigation

This investigation covers sales of the subject merchandise by Camesa during the period from November 1, 1991 through April 30, 1992.

Best Information Available

For our preliminary determination, we used BIA for Camesa as required by section 776(c) of the Act, because respondent failed to meet the deadline for responding to sections B and C of the Department's questionnaire.

Section 353.37(b) of the Department's regulations (19 CFR 357.37(b) (1992)) provides that the Department may take into account whether a party fails to provide requested information, or otherwise significantly impedes the Department's investigation in determining what is BIA. As BIA, we used petitioner's information as described below.

Verification

No verification took place because the respondent failed to adequately respond to the Department's questionnaire.

Interested Party Comments

Comment 1

The respondent, Camesa, objects to the Department's strict adherence to filing deadlines which ultimately culminated in the Department's use of BIA to calculate the preliminary antidumping margin. Camesa admits error in not filing their questionnaire response but states that the basis for the error was "an oversight by Camesa's counsel."

Camesa supports its argument by citing the parallel investigation of steel wire rope from Korea (Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Steel Wire Rope From Korea ("the Korean case"), 57 FR 45035 (September 3, 1992)). Camesa alleges that in the Korean case, the Department both accepted petitioner's sales at below cost ("COP") allegation subsequent to the Department's deadline and granted a retroactive extension for filing the COP allegation. Camesa states the Department should remedy its allegedly inconsistent actions.

The petitioner agrees with the Department's use of BIA due to the respondent's failure to submit a timely questionnaire response.

Department's Position

Deadlines for responses to the Department's questionnaires are set in accordance with § 353.31(b)(2) of the Department's regulations, which authorizes the Department to "specify the time limit for response." Section 353.31(b) further provides that "ordinarily the [Department] will not extend the time limit stated in the questionnaire or request for other factual information. *Before the time limit expires,* the recipient of the [Department's] request may request an extension (emphasis added)." In the present case, respondent failed to request a timely extension for responding to sections B and C of the Department's questionnaire. Only after

the deadline had passed did Camesa request an extension of the questionnaire deadline. Thus, the Department correctly denied this request as untimely.

Unlike the situation presented in this investigation, the petitioner in the parallel Korean case did not miss the relevant deadline. Given the Department's postponement of the preliminary determination in accordance with § 353.15(c), the petitioner's COP allegation was filed no later than 45 days before the scheduled date for the preliminary determination, the deadline set forth in § 353.312(c)(1)(i) of the Department's regulations. Thus, the Department's acceptance of the COP allegation did not constitute a "retroactive extension" as alleged by the respondent.

Comment 2

Camesa argues that it did cooperate with the Department during the investigation and therefore, the preliminary margin, based on the highest margin included in the petition, was erroneous. Camesa supports its argument by citing the facts surrounding the Department's refusal to extend the deadline for filing sections B and C of the questionnaire response. Camesa states that it submitted an "extensive and complete response to section A of the questionnaire that totalled well over 300 pages." Furthermore, Camesa states that it did attempt to obtain an extension of the deadline for submitting the response to sections B and C. Camesa cites the Department's refusal to extend that deadline as the reason why Camesa did not submit the response. According to Camesa, given that fact, the Department cannot characterize this as a case "in which the respondent has willfully refused to respond to the Department's questionnaire." Consequently, Camesa should be characterized as a cooperative respondent.

The petitioner agrees with the Department's selection of the highest rate alleged in the petition as the basis for BIA in this situation. In support of its position, the petitioner states that both the statute and the regulations warrant the use of BIA when a party does not respond to the Department's request for factual information in a timely manner (citing 19 U.S.C., 1677e(c); 19 CFR 353.37(a)). As for what constitutes BIA in a particular situation, the petitioner cites § 353.37(b) of the Department's regulations which provides "[i]f an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take that into account in determining what is best information available."

Petitioner argues that the actions taken in the preliminary determination are consistent with the Department's own administrative practice. They cite Sodium Thiosulfate from the Federal Republic of Germany and the United Kingdom, Final Determinations of Sales at Less Than Fair Value, 55 FR 51749 (December 17, 1990), wherein the Department used the highest margin alleged in the petition as the basis of BIA despite the fact that respondent's failure to "respond was a result of its 'modest level of involvement in the U.S. market, not because it attempted to impede the Department's investigation.'" Petitioner further alleges that selecting the highest rate alleged in the petition is consistent with Department practice even though respondent provided "some" information (citing Steel Wire Rope from Mexico, Final Determination of Sales at Less Than Fair Value, 56 FR 31098 (July 9, 1991)).

The petitioner states that not only are the Department's actions consistent with prior administrative practice but judicial precedent as well. They cite *Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185 (Fed. Cir. 1990), wherein the Court of Appeals for the Federal Circuit affirmed the Department's "selection of the highest margin available where timely and sufficient responses are not submitted." The petitioner also cites *Allied-Signal Aerospace Co.* v. *United States* ("*Allied-Signal*"), 16 CIT _____, Slip Op. 92–157 (September 17, 1992), where the Court of International Trade ("CIT") upheld the Department's decision to select the highest margin among other companies' rates from the prior investigation as BIA, rather than the highest margin for other companies involved in the subject review.

Department's Position

The Department disagrees with the respondent. We determine that using the highest margin contained in the petition as BIA is consistent with the Act, the Department's regulations, and the administrative and judicial precedent, noted above. In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department may assign lower rates for those respondents who cooperated in an investigation and rates based on more adverse assumptions for those respondents who did not cooperate in an investigation. See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes From Taiwan, 57 FR 53705, 53708 (November 12, 1992).

Camesa's complete failure to reply to sections B and C of the Department's questionnaire has been determined by the Department to constitute uncooperative behavior. Camesa's response to section A, in no way, gave the Department any basis to estimate the actual dumping margins during the POI. Therefore, in accordance with Department practice, we are applying the higher of (1) the highest margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation. See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes From Taiwan, 57 FR 53705, 53708 (November 12, 1992). Because Camesa was the only respondent in the investigation, we are applying the highest margin alleged in the petition, as adjusted (see Department Position to Comment 3).

Comment 3

Camesa argues that there is no evidence in the petition to support the highest dumping margin alleged by the petitioner, and cites the previous investigation, decided a year and a half ago, in which the Department assigned a dumping margin of only 52.46 percent. Noting the disparity between the margin alleged in the current petition (133.83 percent) and the margin alleged a year and a half ago on the same product, Camesa states the dumping allegations found in the current petition are "seriously flawed."

Camesa questions whether the petition correctly deducted a distributor mark-up from Camesa's alleged U.S. prices, "even though the petition clearly indicates that the alleged U.S. prices represented prices that *Camesa* received from its unrelated distributor customers, not the prices received by a Camesa distributor from its customers." (emphasis in the original).

Camesa argues that the petition both overstates the U.S. credit expense by applying a Mexican peso interest rate to the difference between the credit terms on U.S. and home market sales and by using an "improper" Mexican peso rate to calculate the U.S. credit expense. Camesa states that this methodology is erroneous due to "the fact that higher prices result in a higher credit expense" and if Camesa was actually dumping, "the credit expense on home-market sales would be higher than the credit expense on U.S. sales (for an equivalent credit period)." Camesa states that because its U.S. prices were denominated in U.S. dollars, the U.S. credit expense should have been calculated using a U.S. dollar interest

rate ("which was significantly lower than the Mexican peso interest rate").

Finally, Camesa argues that the calculation found in petition "seriously understates Camesa's home-market discounts." Camesa alleges that the petition is inconsistent by both "ignoring a number of additional discounts offered by Camesa on home-market sales" (documented in section A of its questionnaire response) and in calculating the alleged margin using a discount rate of 28.5 percent when, "according to the petition, most of Camesa's home-market distributors receive discounts of 37 percent."

The petitioner submits that its allegations were based on both "affidavits from industry participants and a comprehensive report from an outside consultant." Petitioner states that, "[n]otwithstanding these facts," the Court of International Trade has determined that, "the information that Commerce ultimately selects as the best information available is 'not necessarily accurate information, it is information which becomes usable because a respondent has failed to provide accurate information.'" (*Allied-Signal*, Slip Op. at 6, *citing Association Columbiana de Exportadores de Flores* v. *United States*, 13 CIT 13, 28, 704 F. Supp. 1114, 1126 (1989), *appeal after remand*, 13 CIT 526, 717 F. Supp. 834 (1989), *aff'd*, 901 F.2d 1089 (Fed. Cir. 1990), *cert. denied sub nom. Floramerica, S.A.* v. *United States*, 111 S.Ct. 136 (1990).

Department's Position

We agree, in part, with Camesa. Because Camesa is prohibited by law from commenting on the methodology in the petition prior to initiation (see: 19 CFR 353.12(i) and *Roses, Inc.* v. *United States*, 706 F.2d 1563 (Fed. Cir. 1983), we believe that it is appropriate for the Department to give Camesa a limited opportunity to comment on that methodology, even where it is receiving a margin based entirely on BIA. In this situation, however, Camesa's rights are strictly limited to those comments that it can support without submitting any information on its costs or prices for the record. To allow Camesa selectively to submit such information where it has not submitted an adequate questionnaire response would permit Camesa to manipulate the outcome of the investigation. This would defeat the purpose of the BIA rule, which is to permit the calculation of accurate dumping margins by providing respondents with an incentive to cooperate fully in dumping and countervailing duty proceedings. See: *Rhone Poulenc* v. *United States*, 899 F.2d 1185 (Fed. Cir. 1990). Thus, Camesa is restricted to identifying clerical and methodological errors in the petition on the basis of public information. It may not submit factual information from its records to rebut the facts represented in the petition.

The Department agrees with Camesa in that petitioner incorrectly deducted distributor mark-up Camesa's alleged U.S. prices. The petitioner used Camesa's price to distributors as its basis for U.S. price. Therefore, no deduction for distributor mark-up is necessary. The Department has adjusted its analysis accordingly.

The Department's practice in analyzing credit expenses is to make a circumstance of sale adjustment for a *bona fide* difference in credit expenses incurred in the United States and home market. Notwithstanding the fact that petitioner alleged that such a difference existed, petitioner incorrectly limited its adjustment to FMV and did not provide the requisite information for U.S. credit. Therefore, the Department has disallowed any credit adjustment.

The Department disagrees with Camesa's contention that the petition understates its home market discounts in that the discount rate of 28.5 percent is an average of the rates presented. However, the Department is unable to confirm Camesa's allegation that the petition states, "most of Camesa's home market distributors receive discounts of 37 percent." Thus, no changes in the petitioner's methodology needed to be made.

As for the petitioner "ignoring" discounts offered by Camesa on its home market sales (documented in section A), the Department realizes that a petitioner must use information reasonably available at the time that the petition is submitted. At the time that the original petition was filed, section A of Camesa's questionnaire response was not on the record. Finally, Camesa cannot now rely on selectively reported data with respect to this issue. Therefore, the Department will not further adjust for discounts described in section A of the questionnaire response.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel wire rope from Mexico, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse for consumption on or after September 22, 1992, the date of publication of our preliminary determination in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or bond equal to the estimated dumping margin as shown below. The suspension of liquidation will remain in effect until further notice. The average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
Camesa, S.A. de C.V	111.68
All others	111.68

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Compliance, Import Administration.

Within 45 days from publication of this final notice, the ITC will determine whether these imports are materially injuring or threatening material injury to the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or canceled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on steel wire rope from Mexico, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO. This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20.

Dated: January 29, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2838 Filed 2-5-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-806]

Preliminary Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters From Singapore

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

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager, Ross L. Cotjanle, or Carole Showers, 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) 482-5055, 482-3534, 482-3217, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine, in accordance with section 733 of the Tariff Act of 1930, as amended ("the Act"), that imports of certain portable electric typewriters ("PETs") from Singapore are being, or are likely to be, sold in the United States at less than fair value. The estimated margin is shown in the "Suspension of Liquidation" section of this notice. Also, the Department preliminarily determines that critical circumstances do not exist. If this investigation proceeds normally, we will make our final determination by April 14, 1993.

Case History

Since the publication of our notice announcing the resumption of this proceeding (57 FR 60796, December 22, 1992), the following events have occurred:

On December 30, 1992, the United States Court of International Trade ("CIT") in Slip. Op. 92-232 denied Smith Corona's Application for a Stay Pending Appeal. On January 8, 1993, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise, within the meaning of section 733(e) of the Act. On January 12, and January 26, 1993, respondent and petitioner, respectively, filed submissions regarding whether the petition in this proceeding was filed "on behalf of" the relevant U.S. industry.

Scope of Investigation

The merchandise covered by this investigation consists of certain portable electric typewriters (PETs) from Singapore which are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria: (1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; (2) electric, regardless of source of power; (3) comprised of a single, integrated unit; (4) having a keyboard embedded in the chassis or frame of the machine; (5) having a built-in printer; (6) having a platen to accommodate paper; and (7) only accommodating its own dedicated or captive software, if any.

Based on petitioner's request, the Department has decided not to include all types of PETs which were determined to be within the scope of the antidumping order on PETs from Japan in the Department's final scope ruling signed on November 2, 1990 (*see* 55 FR 47358, November 13, 1990). PETs which meet all of the following criteria are excluded from the scope of this investigation: (1) seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform "block move"; and (4) a "search and replace" function. A machine having some, but not all, of these four characteristics is included within the scope of the investigation.

The PETs subject to this investigation are currently classifiable under subheadings 8469.21.00 and 8469.10.00 of the Harmonized Tariff Schedule ("HTS"). (Note that personal word processors also are classifiable under subheading 8469.10.00.) Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is November 1, 1990, through April 30, 1991.

Standing

We received several submissions from Smith Corona during the period April 29 through July 22, 1991, challenging Brother's standing to file the petition and requesting rescission of the initiation in this investigation. Smith Corona raised two standing issues: (1) Whether Brother is an interested party within the meaning of section 771(9)(C) of the Act and (2) whether Brother has filed on behalf of the domestic industry.

With respect to Brother's status as an interested party, on September 3, 1992, the CIT, in Slip. Op. 92-152, reversed the Department's determination of September 25, 1991, that Brother was not an interested party and did not have standing to file a petition against PETs from Singapore. The CIT's decision has been appealed, but while the appeal is being decided, the Department has been directed to determine whether the petition in this proceeding was filed "on behalf of" the domestic industry and, if so, to proceed with the investigation (Slip. Op. 92-211, Nov. 30, 1992). For the reasons discussed below, we determine that Brother has filed its petition on behalf of the U.S. industry.

On April 29, 1991, Smith Corona identified itself as a domestic producer of PETs in opposition to the petition filed by Brother. Where a domestic industry member opposing a petition provides a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing party, or parties, do, in fact, represent a majority of the domestic industry. Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19005 (May 3, 1989) ("Antifriction Bearings"). Therefore, on May 17, 1991, we issued a standing questionnaire to Smith Corona to ascertain: (1) the extent of Smith Corona's relationship with the exporter of the subject merchandise; (2) the extent to which Smith Corona is an importer of the allegedly dumped merchandise; and, (3) the share of domestic production and sales accounted for by Smith Corona.

After our review of Smith Corona's June 6, 1991 response to the standing questionnaire, we determined that more information was needed to complete our analysis. Therefore, on August 14, 1991, we asked both Smith Corona and Brother to submit to the Department the same U.S. production and sales data which they had submitted to the ITC. The ITC format was instructive because it required the parties to report production and sales data separately for both PETs/portable automatic typewriters ("PATs") and portable electronic word processors ("PEWPs").

Based on the production and sales data submitted, we computed the respective shares of U.S. production and sales held by Smith Corona and Brother. These calculations show that the opponent of the petition, Smith Corona, does not represent a majority of U.S. production or sales (measured by volume or value). Therefore, consistent with the policy articulated in

Antifriction Bearings, we determine that the petition was filed on behalf of the U.S. industry.

In Antifriction Bearings, the Department went on to discuss whether the domestic industry should be defined to exclude related parties or importers for standing purposes, as permitted by section 771(4)(B). On prior occasions, the Department has excluded such firms from the industry. See, for example, Fabricated Automotive Glass From Mexico: Final Determination of Sales at Less Than Fair Value, 50 FR 1906 (January 14, 1985). The Department pointed out in Antifriction Bearings that the firms in opposition were wholly-owned subsidiaries of the responding companies. In this proceeding, we note that the exporter is a wholly-owned subsidiary of Smith Corona. We further note that imports of the subject merchandise account for more than fifty percent of Smith Corona's sales of this product. Under the test applied in Frozen Concentrated Orange Juice From Brazil; Final Determination of Sales at Less Than Fair Value, 52 FR 8324 (March 17, 1987), this would lead us to conclude that, while Smith Corona is a U.S. manufacturer of PETs, its interests in this specific investigation are closely tied to imports of the allegedly dumped PETs, and thus run counter to the imposition of antidumping duties on imports of PETs from Singapore. Therefore, we may not consider Smith Corona a member of the domestic industry in this proceeding.

In its submission of January 12, 1993, Smith Corona has asked the Department to adjust the production figures for Brother and Smith Corona to account for the value added by the two companies in the United States (*i.e.*, to weight the production figures according to the percentage of U.S. value-added). In Smith Corona's view, such an adjustment will reflect the underlying U.S. employment and investment of the two companies and, hence, yield a more accurate measure of domestic production.

We are not persuaded that we should make the novel adjustment requested by Smith Corona. Smith Corona has not cited, nor can we find, any precedent for defining a U.S. industry in terms of the U.S. value added to its product. Nor do we find any statutory basis for doing so. The legislative history indicates that the standing criteria by which we determine Brother's standing should be applied "to provide an opportunity for relief for an adversely affected industry and to prohibit petitions filed by persons with no stake in the result of the investigation" S. Rep. No. 249, 96th Cong., 1st Sess., 63. In this instance, Brother is a U.S. producer representing a substantial share of the industry's output and Brother clearly has a "stake" in the outcome of the proceeding. Hence, the standing criteria may not be used to defeat Brother's claim for protection from imports that are alleged to be unfairly traded.

Such or Similar Comparisons

We established one such or similar category of merchandise in accordance with section 771(16) of the Act: portable electric typewriters. For all PETs, comparisons were made on the basis of: (1) Type of PET; (2) memory capacity; (3) display screen; (4) display capacity; (5) printing mechanism; and (6) dictionary features. We used third country sales as the bases for foreign market value ("FMV") for Smith Corona (PTE), Ltd. ("SCPTE"), as described below in the "Foreign Market Value" section of this notice.

In its responses, SCPTE based its selection of similar merchandise on the criteria listed above plus three additional factors. SCPTE did not demonstrate, however, that the additional criteria resulted in more appropriate comparisons. Therefore, for purposes of our preliminary determination, we have rejected the additional factors identified by SCPTE and made our selection of similar merchandise solely on the basis of the criteria identified by the Department in its questionnaire. Accordingly, we revised the concordance submitted by SCPTE.

Because there was no identical merchandise sold in the third country market to compare to sales of merchandise in the United States, sales of the most similar merchandise based on the characteristics described above were used. In determining which merchandise was similar, we limited our comparisons to products sold in the third country that had difference in merchandise adjustments which were less than 20 percent of the total cost of manufacturing for the U.S. merchandise.

Fair Value Comparisons

To determine whether sales of PETs from Singapore to the United States were made at less than fair value, we compared United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

In calculating USP, the Department used purchase price, as defined in section 772 of the Act, for certain sales because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price ("ESP") methodology was not indicated by other circumstances. We also based USP on ESP, in accordance with section 772(c) of the Act, for those sales which were made to unrelated parties after importation into the United States.

We calculated purchase price based on packed, delivered, duty-paid prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage, containerization and handling, foreign inland freight, ocean freight, marine insurance, U.S. customs duties, and a sales allowance discount in accordance with section 772(d)(2) of the Act.

Where USP was based on ESP, we calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage, containerization, foreign inland freight, ocean freight, marine insurance, U.S. customs duties, U.S. inland freight (U.S. warehouse to customer), U.S. handling, freight credits, cash discounts, rebates, key city allowances, direct from invoice advertising credits, and sales allowances in accordance with section 772(d)(2) of the Act. We made further deductions, where appropriate, for credit, advertising accrual rebates, promotional allowances, prep allowances, warranties, commissions, and indirect selling expenses, including warehousing, product liability premiums, corporate advertising, inventory carrying costs, and U.S. indirect selling expenses in accordance with section 772(e) of the Act.

We have included in our USP calculations certain sales transactions reported by SCPTE in a separate database as "Exceptions." Those transactions include closeout sales, sales of discontinued models, employee sales, consignment sales, and free goods. Closeout sales and sales of discontinued models are properly included in our calculation of USP because the Department does not ignore U.S. sales on the basis of obsolescence. See Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review; 56 FR 14072 (April 5, 1991). Although SCPTE argued that "employee sales" are sales to related parties and should not be included in the USP analysis, the Department's practice is to include this type of transaction in our analysis. See, Television Receiving Sets, Monochrome and Color, From Japan; Final Results of Administrative Review of Antidumping

Finding 46 FR 30163 (June 5, 1981). Furthermore, respondent has not demonstrated that consignment sales and free goods should be excluded from the Department's calculation of USP. Certain U.S. sales transactions with sale dates outside the POI were excluded.

In addition, for certain U.S. sales, SCPTE did not report a payment date or a credit expense. For purposes of this determination, we have assigned to these transactions the original date of the Department's scheduled preliminary determination, September 25, 1991, as the date of payment and have used that date in the calculation of a U.S. credit expense. See Final Determination of Sales at Less Than Fair Value: Gene Amplification Thermal Cyclers and Subassemblies Thereof, From the United Kingdom 56 FR 32172 (July 15, 1991).

Foreign Market Value

In order to determine whether there were sufficient sales of such or similar merchandise in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of such or similar merchandise to the volume of third country sales of such or similar merchandise, in accordance with section 773(a)(1) of the Act. SCPTE's home market sales were less than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales did not constitute a viable basis for calculating FMV, in accordance with section 353.48 of the Department's regulations.

In accordance with section 773(a)(1)(B) of the Act, we calculated FMV based on third country sales.

In selecting which third country market to use for comparison purposes, we followed 19 CFR 353.49(b). Accordingly, we selected the United Kingdom (UK) because (1) it had the largest volume of sales to any third country, and (2) the market, in terms of organization and development, is most like the United States. The Department did not base its selection of the UK on the first factor listed in the regulation, because the Department had no information with which to compare the similarity of the merchandise sold to other third country markets to the merchandise sold in the United States. Furthermore, we determined that the volume of sales to the UK market was adequate within the meaning of 19 CFR 353.49(b)(1) because the sales of such or similar merchandise exceeded five percent of the volume sold to the United States.

We calculated FMV based on packed, delivered prices to unrelated customers in the UK. We made deductions, where appropriate, for foreign brokerage, foreign inland freight, containerization, ocean freight, marine insurance, UK inland freight (UK warehouse to customer), rebates, other allowances, cash discounts, and a customer specific discount. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Where USP was based on purchase price, we made adjustments to FMV for differences in circumstances of sale. We adjusted for differences in credit, warranties, co-op advertising, advertising accruals, promotional allowances, and royalties in accordance with 19 CFR 353.56.

For comparisons involving ESP transactions, we made further deductions for third country indirect selling expenses, including warehousing, inventory carrying costs, product liability premiums, corporate advertising, U.S. indirect selling expenses incurred on behalf of UK sales, and UK indirect selling expenses, capped by the sum of commissions paid and indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

In addition, where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

We have excluded sample sales in calculating FMV because Section 773 of the Tariff Act of 1930, as amended, requires that FMV be based on sales made in the ordinary course of trade. These sample sales in the UK were transferred free of charge. Therefore, we consider these sample sales not to be in the ordinary course of trade and have disregarded them in the calculation of FMV. See, Antifriction Bearings, at 19087.

Currency Conversions

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

Verification

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

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of PETs from Singapore. Section 733(e)(1) of the Act provides that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

With respect to Section 733(e)(1)(A)(i) of the Act regarding a history of dumping, petitioner cites the Department's outstanding antidumping order on Portable Electric Typewriters from Japan. However, an outstanding dumping determination involving a class or kind of merchandise from another country does not show a history of dumping of the merchandise subject to this investigation. If, however, another country had an outstanding order on PETs from Singapore, this could be used to establish a history of dumping in accordance with section 733(e)(1)(A)(i) of the Act. Because the Department has no knowledge that such an order has ever existed, there is no history of dumping of this class or kind of merchandise pursuant to Section 733(e)(1)(A)(i) of the Act.

Under section 733(e)(1)(A)(ii) of the Act, the Department examines the magnitude of the dumping margins in the investigation, since it is the standard practice to impute knowledge of dumping when the margins are of such a magnitude that the importer should have realized that dumping existed with regard to the subject merchandise. Normally, in purchase price sales, we consider estimated margins of 25 percent or greater to be sufficient, and in exporter's sales prices sales, margins of 15 percent or greater to be sufficient to impute knowledge of dumping.

In this investigation, there were both purchase price and exporter's sales price sales. Accordingly, we weight-averaged the 25 percent and 15 percent benchmarks by the volume of PP and ESP sales, respectively, to arrive at a benchmark for imputing knowledge. Because the preliminary dumping margin for Smith Corona does not exceed the benchmark, we find no basis for concluding that the importers knew or should have known that this company was selling the subject merchandise at less than fair value.

Since there is no history of dumping of the subject merchandise and no reason to believe or suspect that importers of this product knew or should have known that it was being

sold at less than fair value, the Department does not need to consider whether imports have been massive pursuant to 19 CFR 353.16(a)(2). Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of the subject merchandise from Singapore.

Suspension of Liquidation

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

Manufacturer/producer/exporter	Weighted-average margin percentage
Smith Corona PTE Ltd	16.02
All Others	16.02

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of PETs from Singapore are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 29, 1993, and rebuttal briefs no later than April 5, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held on April 7, 1993, at 2 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

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

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 29, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2833 Filed 2-5-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-570-818]

Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the People's Republic of China

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

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0371.

FINAL DETERMINATION: The Department of Commerce ("the Department") determines that sulfur dyes, including sulfur vat dyes, from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673d). The Department also determines that critical circumstances exist for all exporters except Sinochem International Chemicals Company, Ltd. ("SICC"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Period of Investigation

The period of investigation ("POI") is November 1, 1991, through April 31, 1992.

Case History

Since our affirmative preliminary determination on September 17, 1992 (57 FR 44165, September 24, 1992), the following events have occurred.

On September 18, 1992, respondents, Kwong Fat Hong Chemicals, Ltd. ("KFC"), Sinochem Shandong Import and Export Corporation ("Sinochem Shandong"), and SICC, submitted responses to the Department's market oriented industry ("MOI") questionnaire on behalf of Tianjin Bohai Dyes Factory ("Tianjin"), Wuhan Sulfur Dyestuff Factory ("Wuhan") and Handan Dyes Factory ("Handan").

On September 28, 1992, we received an allegation of clerical errors in the preliminary determination. We determined that the allegations did not involve clerical errors.

On October 1, 1992, respondents requested an extension of time in which to submit publicly available published information ("PI"). We granted the extension until November 9, 1992. We received a timely submission containing PI from respondents. On October 2, 1992, the petitioner, Sandoz Chemicals Corporation, submitted an allegation that KFC's home market and third country sales are below the cost of production. On October 8, and December 9, 1992, respondents submitted comments opposing petitioner's sales below cost allegation.

On October 2, 1992, we received a request from respondents to postpone the final determination pursuant to 19 CFR 353.20, and on October 23, 1992, we published a notice of postponement of final antidumping duty determination in this investigation (57 FR 48356).

Also on October 2, 1992, petitioner requested a public hearing. On October 6, 1992, KFC, Sinochem Shandong, SICC, respondents and C.H. Patrick & Company, Inc. ("CHP") and International Technical Services, Ltd. ("Intertech"), importers also requested a public hearing.

On October 7, 1992, respondents submitted a response to the market rates questionnaire on behalf of the Ministry of Foreign Economic Relations and Trade (MOFERT). On November 4, 1992, we requested that MOFERT provide us with background information on the sulfur dye industry in the PRC. On November 17, 1992, MOFERT submitted its response to our November 4, 1992, request.

From November 23 through December 11, 1992, the Department conducted verifications in Hong Kong and the PRC of the questionnaire responses submitted by respondents.

On January 15, 1993, petitioners, respondents and CHP submitted case briefs. On January 19, 1993, respondents and petitioner submitted rebuttal briefs. At the request of the Department,

petitioner submitted a supplemental brief on January 19 and on January 21, 1993, respondents submitted comments rebutting this brief. A public hearing was held on January 21, 1993.

Scope of Investigation

The merchandise subject to this investigation is sulfur dyes, including sulfur vat dyes. Sulfur dyes are synthetic, organic, coloring matter containing sulfur. Sulfur dyes are obtained by high temperature sulfurization of organic material containing hydroxy, nitro or amino groups, or by reaction of sulfur and/or alkaline sulfide with aromatic hydrocarbons. For purposes of this investigation, sulfur dyes include, but are not limited to, sulfur vat dyes with the following color index numbers: Vat Blue 42, 43, 44, 45, 46, 47, 49, and 50 and Reduced Vat Blue 42 and 43. Sulfur vat dyes also have the properties described above. All forms of sulfur dyes are covered, including the reduced (leuco) or oxidized state, presscake, paste, powder, concentrate, or so-called "pre-reduced, liquid ready-to-dye" forms. The sulfur dyes subject to this investigation are classifiable under subheadings 3204.15.10, 3204.15.20, 3204.15.30, 3204.15.35, 3204.15.40, 3204.15.50, 3204.19.30, 3204.19.40 and 3204.19.50 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Separate Rates

In our preliminary determination, we stated that the final decision as to whether Sinochem Shandong and SICC should receive company-specific rates would depend upon successful verification of the factual assertions made by respondents and relied upon in the preliminary determination.

Based on our findings at verification, we have determined that Sinochem Shandong and SICC have demonstrated, pursuant to the test enunciated in the Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers"), that they are entitled to separate rates. Unless a respondent demonstrates entitlement to a separate, company-specific rate pursuant to the test enunciated in Sparklers, we will presume that they are subject to a single rate. (See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992) ("Butt-weld")). In this instance the PRC government did not adequately respond to our questionnaire. In particular, it failed to identify all sulfur dye producers as requested by the questionnaire. Therefore, pursuant to section 776(c) of the Act, we used the rate set forth in the petition as best information available ("BIA") when calculating the "All Other" rate in accordance with the two-tiered BIA methodology, outlined in Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid From the People's Republic of China, 57 FR 9409, 9410, (March 18, 1992)) ("Sulfanilic Acid").

Fair Value Comparisons

To determine whether sales of sulfur dyes, including sulfur vat dyes, from the PRC to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales prices methodology, in those instances, was not otherwise indicated.

For Sinochem Shandong and SICC, we calculated purchase price based on packed c.i.f. prices from the respective trading companies to unrelated customers. We made deductions, where appropriate, for foreign inland freight, ocean freight, and marine insurance. We also made deductions for a trade discount. Consistent with the preliminary determination, we continued to use, as BIA, the highest inland freight amount in the PRC calculated for the distances from factory to port for Shandong and SICC. The inland freight expense was based on a quoted truck freight rate contained in a public, June 1992, cable from the U.S. embassy in India. See Surrogate Country section below.

For KFC, we calculated purchase price based on packed c.i.f. prices from KFC to unrelated customers. We deducted foreign inland freight, ocean freight, marine insurance, drayage, other expenses, and a third party surcharge.

Foreign Market Value

Section 773(c)(1) of the Act provides that the Department shall determine foreign market value using factors of production methodology if (1) the merchandise is exported from a non-market economy ("NME"), and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value under section 773(a) of the Act.

In past cases (*e.g.*, Final Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts From the People's Republic of China, ("Lug Nuts") 56 FR 46153 (September 10, 1991), and Sparklers), and indeed in every case conducted by the Department involving the PRC, the PRC has been treated as an NME. In this case, none of the parties to this proceeding has suggested that the PRC is no longer an NME. However, respondents claim that their raw materials and labor inputs used in the production of the subject merchandise are market driven, and, therefore, that the sulfur dyes, including sulfur vat dyes, industry in the PRC is a MOI.

The Department has previously interpreted section 773(c)(1)(B) of the Act to mean that FMV can be based on an NME exporter's prices or costs, despite the fact that the country may otherwise be considered an NME, if sufficient market forces are at work (see *Lug Nuts* and Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China, ("Fans") 56 FR 55271 (October 25, 1991).

In the preliminary determination in this investigation, the Department stated the criteria that would be used for determining whether a MOI exists in an economy which otherwise is considered to be non-market:

- For merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced. For example, state-required production of the merchandise, whether for export or domestic consumption in the non-market economy country would be an almost insuperable barrier to finding a market-oriented industry.
- The industry producing the merchandise under investigation should be characterized by private or collective ownership. There may be state-owned enterprises in the industry but substantial state ownership would weigh heavily against finding a market-oriented industry.
- Market-determined prices must be paid for all significant inputs, whether material or non-material, and for an all but insignificant proportion of all the inputs accounting for the total value of the merchandise under investigation. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation pay a state-set price for the input or if the input is supplied to the producers at government direction. Moreover, if there is any state-required production in the industry producing the

input, the share of state-required production must be insignificant.

If these conditions are not met, pursuant to 19 CFR 353.52, the foreign market value will be calculated by using prices and costs from a surrogate country, in accordance with section 773(c) (3) and (4) of the Act.

The responding trading companies and factories have submitted information in support of their MOI claim. These firms account for approximately 35 percent of PRC production and 30 percent of exports to the United States during the POI. While the above firms have attempted to provide information in support of their MOI claim, the PRC government has been less than cooperative in this case. The PRC government failed to respond to the MOI questionnaire when we first issued it, and also failed to respond to our "Mini-section A" questionnaire which seeks to identify producers. Even though the PRC government did eventually respond to a portion of our "MOI questionnaire", it did so only after we made it clear to them that unless it responded we would not even consider the MOI claim being made by the responding companies. We determined that it would not be possible to adequately evaluate an MOI claim without full government cooperation.

The PRC government's lack of timely and complete cooperation has left us with insufficient information to reasonably evaluate the market orientation of the PRC sulfur dye industry as a whole. Most important is the fact that we have detailed information on only 35 percent of the industry which consists solely of voluntary respondents. Because the PRC government failed to cooperate in the beginning of the investigation, we were unable to identify and select additional companies to investigate in order to have a large and more representative group of companies with which to evaluate the entire industry.

The PRC government has provided some information regarding the question of government controlled production, so called "in-plan" production, of vat dyes and some inputs. The PRC government has also provided some information as to the identity of the other producers. However, the information submitted in the government questionnaire response, and the information provided at verification, are inadequate regarding all three elements of the MOI test. The specific deficiencies are: (1) The list of in-plan products provided by the PRC government which shows that vat dyes and their inputs are not in-plan is not time-specific and does not clearly cover the POI; (2) the PRC government has not provided sufficient data on the extent of state ownership of the remaining 65 percent of the sulfur dye industry; and (3) the PRC government has not provided any information on whether market prices are paid for the inputs of the suppliers of the 65 percent of the industry which is non-responding. For all of the above reasons, we determine that there is an insufficient basis for finding a MOI in this case.

Surrogate Country

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country, and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are the most comparable to the PRC in terms of overall economic development, based on per capita gross national product ("GNP"), the national distribution of labor, and growth rate in per capita GNP. (See memorandum from the Office of Policy to David L. Binder, dated August 6, 1992.) Because India fulfills the requirements outlined in the statute, India is the preferred surrogate country for purposes of valuing the factors of production used in producing the subject merchandise. We have used only Indian surrogate value for purposes of the final determination.

We valued the factors of production in accordance with the hierarchy for preferred input values set forth in Butt-Weld. We first used Indian published material before resorting to unclassified information contained in U.S. government cables, or the public cost of production questionnaire response of Atul, a respondent in a companion case involving India, which was submitted on the record in this case ("Atul's response").

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for respondents. The factors used to produce sulfur dyes include materials, labor, and energy. We verified the production information of three of the factories which submitted information on behalf of KFC, Sinochem Shandong, and SICC.

To value dinitrochlorobenzene ("DNCB"), sodium sulphide, and sodium hydroxide, we used published, publicly available information from Chemicals Weekly, and also Chemical Business in the case of sodium hydroxide, as provided in respondents' November 9, 1992, submission. (See Comment 1 for a complete discussion of this issue). To value sulfur, we used published, publicly available information from the Monthly Statistics of the Foreign Trade of India (March 1988) as in the preliminary determination. We adjusted the factor values for the POI using wholesale price indices published by the International Monetary Fund.

To value labor rates, we used unskilled and skilled labor rates, including benefits, obtained from the U.S. embassy in India, as was done in the preliminary determination. We adjusted the unskilled wage rate to account for the number of hours in an Indian work week based on information contained in the published source, Country Reports on Human Rights Practices for 1990, which was submitted to the U.S. Senate Committee on Foreign Relations in February 1991.

To calculate FMV, the reported factors of production were multiplied by the appropriate Indian values for the various components. With the exception of DNCB for Tianjin, we added an amount for the delivery of inputs to the factory to arrive at a delivered cost of materials. We calculated the truck freight rate based on June 1992 information obtained from the U.S. embassy in India. Based upon the wholesale price indices available, we did not adjust this figure. We calculated train freight rates based on a December 1989 cable from the U.S. embassy in India. We adjusted the figures for the POI using wholesale price indices published by the International Monetary Fund.

We valued factory overhead, SG&A, and profit based upon information provided by respondents in their November 9, 1992, submission. (See Comment 1 for a complete discussion of this issue).

We also added, where appropriate, an amount for packing labor based on the appropriate Indian skilled and unskilled wage rates, and an amount for packing materials based on Indian prices obtained from the public record of the concurrent investigation of sulfur dyes, including sulfur vat dyes, from India, in order to arrive at a constructed FMV for one metric ton of sulfur dye. (For a complete analysis of surrogate values, see our concurrence memorandum dated January 22, 1993.)

Critical Circumstances

Petitioner alleged that "critical circumstances" existed with respect to imports of sulfur dyes, including sulfur vat dyes, from the PRC. Section 735(a)(3) of the Act provides that critical circumstances exist when we determine

that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding criterion (A)(ii) above, we normally consider margins of 25 percent or more in the case of purchase price comparisons, and 15 percent or more in the case of exporter sales price comparisons, sufficient to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act.

Pursuant to 19 CFR 353.16(f), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Regarding (A) above, the margins found for Sinochem Shandong, SICC, and KFC are all over 25 percent, and accordingly, we can impute knowledge.

Regarding (B) above, for Sinochem Shandong, its imports increased by over 15 percent between the period November 1, 1991 through March 31, 1992 and the period April 1 through August 31, 1992 ("the comparison periods"), and thus have increased massively. For SICC, its imports increased by less than 15 percent between the comparison periods, and thus have not increased massively. For KFC, because KFC did not provide the monthly shipment information requested in the questionnaire, we find that its imports are massive based on BIA.

In accordance with section 735(a)(3) of the Act, we determine that critical circumstances exist with respect to imports from Sinochem Shandong and KFC, and that critical circumstances do not exist with respect to imports from SICC. With respect to the firms covered by the "All Other" rate, because that dumping margin is sufficient to impute knowledge of dumping, and because we have determined that imports of sulfur dyes, including sulfur vat dyes, have been massive over a relatively short time for at least two firms, we determine that critical circumstances also exist for "all other" firms.

Currency Conversion

When calculating foreign market value, we made currency conversions in accordance with 19 CFR 353.60(a).

Verification

Pursuant to section 776(b) of the Act, we verified information used in reaching our final determination. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

Interested Party Comments

Comment 1

Respondents state that the Department should use the PI provided in respondents' November 9, 1992, submission for valuing the factors of production in a surrogate economy. Specifically, respondents argue that the Department should use the internal prices in India, the surrogate country of first choice, for DNCB, sodium hydroxide, sodium sulfide and many of the other raw material inputs used to produce the subject merchandise. Respondents avow that since neither of the Chinese sulfur black producers use imported inputs, the Department should not rely on import statistics to value the factors of production in this case. Regarding DNCB, respondents state that the Department should not use the inflated German import value that was used in the preliminary determination. Respondents also state that, since neither Chinese nor Indian sulfur black producers use imported DNCB for production, neither should the Department use imported figures. On these bases, respondents urge the Department to use the domestic cost of DNCB in India, or the price of DNCB in China, to reflect the true cost of DNCB. Regarding sodium hydroxide, respondents also argue that the Department should use the PI submitted by respondents in its November 9, 1992, submission.

Regarding overhead, respondents claim that the Department double counted energy and diesel fuel based upon the items included at Atul's factory overhead. Respondents argue that we should use the overhead rate they calculated based on Atul's response.

Regarding selling, general and administrative expenses ("SG&A"), respondents argue that we should use the rate they calculated based on Atul's response.

Petitioner states that there is nothing in the record which supports respondents' statement that Indian sulfur dye producers do not use imported inputs. Petitioner claims that the record states that one Indian sulfur black producer produces DNCB for its sulfur black production. Petitioner submits that the Department's reliance on Indian import statistics is proper because they are inherently reliable and are based upon actual prices. Petitioner claims that respondents' assertion that the submitted prices are "actual domestic prices for the inputs" is incorrect. Petitioner contends that the publications submitted on the record by respondents refute any contention that these prices are "actual prices," and that the prices are not actual because they are not firm quotes. Petitioner asserts that the publications note that, with respect to DNCB, the prices are without tax and excise, which is not insubstantial in India. Petitioner estimates that tax and excise can equal 40 percent or more of the sales price. Petitioner states that respondents should have submitted updated import statistics or an alternative inflation factor rather than now complain about the inflation factor used in the preliminary determination.

Regarding profit and factory overhead, petitioner submits that in the preliminary determination, the Department relied upon a previous investigation of the Indian chemicals industry which is more reliable than publications with respect to the chemicals and pharmaceutical industries as suggested by respondents.

Regarding electricity, water, and coal, petitioner states that respondents incorrectly assert that the amounts for these items are already included in the factory overhead of the one producer in the surrogate country. Petitioner argues that respondents cannot make such overbroad claims regarding the practice in India based upon one producer.

DOC Position

In our preliminary determination we relied on data obtained from the following sources: (1) Indian import statistics, (2) an OECD report, and (3) cables from the U.S. embassies in India and Pakistan. In accordance with our recently enunciated practice we invited interested parties to submit PI in a timely fashion. (*see* DAS Sailer memorandum dated September 10, 1992). Respondents' counsel submitted such information for most factor inputs and also submitted the public version of the COP questionnaire response submitted by an Indian producer in the companion case involving Indian sulfur dyes. Respondents' PI consisted of information from the following sources: (1) Three Indian chemical business

publications, and (2) an Indian government study.

In accordance with our hierarchy of preferred surrogate factor value sources articulated in Butt Weld, we have used respondents' PI for inputs which were not valued using PI in the preliminary determination. However, for some inputs, we have both Indian import statistics (which were used in the preliminary determination) and respondents' PI. Thus, we must decide which source of PI is preferable. Respondents' data are more current than the import statistics used in the preliminary determination. In addition, we have observed that the average Indian import value for certain material inputs can vary, sometimes significantly, based on the country of origin, or the quantity of the shipment, and if based on a basket category, the type of merchandise. This indicates that the import statistics may be sensitive to differences in quality, technical specifications, and quantity. In this case, the industry publications in the surrogate country have the advantage of being immune from at least some of these difficulties. Moreover, respondents have provided us with two sources of data with approximately comparable prices leading us to question the import statistics in this case. Accordingly, we have used respondents' PI to value material costs.

Concerning petitioner's arguments about taxes, the record of this case is not dispositive regarding whether any taxes are, or should be paid, the manner in which they would be paid, or how such payment should be incorporated into the factor values used. Moreover, the fact that a publication issues a disclaimer regarding the prices published therein does not invalidate those prices as a reasonable barometer of market conditions. Rather, such disclaimers serve merely to protect the publication from liability. Accordingly, we have used the values as reported in respondents' PI.

Regarding factory overhead, respondents submitted an Indian government study containing data relevant to overhead calculations. However, respondents calculated a fixed overhead ratio of 6.56 percent based solely on depreciation expenses. Our review of the study revealed that there was detailed information on repairs and maintenance, two categories of expenses that are traditionally considered to be overhead expenses. Moreover, the study contained information on energy costs, which, if included with the other expenses, yields an overhead rate of 19.13 percent of materials and labor. We note that the public cost of production response of Atul, an Indian producer of the subject merchandise, reveals a similar overhead rate, inclusive of energy, of 18.55 percent of materials and labor. The recalculated rate of 19.13 percent is preferable because it is more current, clearly identifies the expenses included, and is similar to the rate calculated for a known producer of the subject merchandise in India. Hence, we determined that the recalculated rate of 19.13 percent overhead rate is the most appropriate choice for the final determination.

Regarding selling, general and administrative expenses (SG&A), respondents calculated a SG&A rate of 13.95 percent of cost of manufacture based on Atul's response. However, this calculation involves only general expenses and ignores selling expenses. We recalculated the SG&A rate to include selling expenses, which yielded a rate of 24.14 percent. The recalculated rate is preferable because it is more current than the figure used in the preliminary determination and is based on the experience of a known producer of the subject merchandise in a surrogate country. Moreover, neither the 24.13 recalculated rate nor the rate used in the preliminary determination is PI. Hence, we used the recalculated rate for the final determination.

Finally, regarding profit, as with SG&A, we relied on Atul's response. However, we recalculated respondents' calculations because respondents used net, rather than gross, profit. The recalculated profit rate of 8.87 was greater than the statutory minimum.

Comment 2

Petitioner states that KFC's sales in Hong Kong cannot be used as a basis for FMV as the criteria in 19 U.S.C. 1677b(f) have not been met. According to petitioner, 19 U.S.C. 1677b(f) provides that, only under specifically defined circumstances may an intermediate country be considered the "country from which the merchandise is exported" and foreign market value based on the price in the intermediate country. Petitioner also notes that the Department's regulations specifically provide in 19 CFR 353.46(c) that where merchandise is transshipped through a third country, the Secretary may not, except under CFR 353.47, calculate foreign market value based on the price at which the merchandise is sold in the "country of transshipment." Accordingly, petitioner argues that, under the statutory and regulatory scheme, an intermediate country is considered a "country of transshipment" pursuant to 19 CFR 353.46(c) unless the statutory criteria of 19 U.S.C. 1677b(f) are met. Specifically, petitioner notes that KFC purchases sulfur dyes from the exporter/agent and not from the manufacturer or producer and, therefore, does not satisfy the first criterion of section 1677b(f).

Petitioner states that the second criterion of the statute, which requires a lack of knowledge by the producer or manufacturer of "the country" to which the reseller intends to export the merchandise, has not been met, as Wuhan, the PRC producer, has admitted its knowledge of the country to which KFC, the Hong Kong reseller, intended to export the merchandise, *i.e.*, Hong Kong. Petitioner concludes, based on the statutory language, "such country shall be treated, for purposes of this section, as the country from which the merchandise was exported," that the intermediate country will be considered the country of exportation and FMV determined on that basis. Thus, the country referred to in the second criterion of the statute is the same one referred to in the concluding passage (*i.e.*, the intermediate country), not the United States.

Thus, petitioner argues that in this case, the second statutory criterion requires that Wuhan, as the PRC manufacturer or producer, be unaware that the reseller, KFC, intended to export the merchandise from the PRC to the alleged intermediate country, Hong Kong. Petitioner claims that Wuhan had knowledge of KFC's intent to export the merchandise to Hong Kong and thus, as the second criterion of the statute is not satisfied by Wuhan, the statute requires the Department to treat the PRC, not Hong Kong, as the country of exportation.

Petitioner states that for an intermediate country to be treated as the country from which the merchandise was exported, both the statute and regulations require that the merchandise "enter the commerce of such country." However, petitioner claims that KFC's sulfur dyes do not enter the commerce of Hong Kong. Petitioner contends that the terms "enters the commerce of such country" in 19 U.S.C. 1677b(f)(4) and "enters the commerce of the intermediate country" in 19 CFR 353.47(c) require that the merchandise under consideration be sold or offered for consumption in the intermediate country. Petitioner claims that since the statutory and regulatory criteria have not been met in the instant investigation, Hong Kong cannot be considered "the country from which the merchandise was exported" instead, it is merely a country of transshipment. Petitioner claims that this is a classic case of transshipment where the

merchandise exported to the United States was not even warehoused in Hong Kong. Rather, the goods were placed on a truck at the PRC warehouse and shipped directly to the port in Hong Kong for shipment to the United States. Petitioner argues that at the point of exportation from the PRC the merchandise was destined for the United States. The merchandise, therefore, never entered the commerce of Hong Kong; rather, the merchandise was merely transshipped though Hong Kong.

Respondents claim that the Department verified that KFC meets all of the statutory requirements of the intermediate country provision. Specifically, respondents state that: (1) KFC, a Hong Kong reseller, purchases the merchandise, from the manufacturer or producer of the merchandise in the PRC; (2) the producer, the exporter of the merchandise, and KFC's agent in China do not know (at the time of the sale to KFC) the country to which KFC intends to export the merchandise (*e.g.*, United States); (3) KFC exports sulfur black dye to countries other than the United States; (4) KFC's sulfur black enters the commerce of Hong Kong, but is not substantially transformed in Hong Kong; and (5) KFC's sulfur black is subsequently exported to the United States. As such, respondents claim that KFC should be considered an intermediate country reseller pursuant to the Act. Respondents state that KFC, not the PRC producer or exporter, sells the sulfur black dye and sets the price to the United States and is the source of any dumping. Respondents state that since KFC has the sales organization, the relationships with customers, and sells from inventory out of its warehouses, the Chinese parties (*i.e.*, producers, exporters and the agent) do not and cannot know the ultimate destination of the merchandise at the time of sale to KFC.

Respondents state that when KFC imports sulfur dye into Hong Kong, pursuant to Hong Kong law, it must file an import declaration and items destined for transshipment are not required to be declared. Respondents state that when KFC files an import declaration with the Hong Kong government, it "enters" the sulfur black into the commerce of Hong Kong. Respondents claim that the sulfur dyes could be sold in Hong Kong, and some of the sulfur dyes, in fact, were sold in Hong Kong.

Respondents state that the sulfur dyes KFC sells to the United States are also exported to countries other than the United States. Respondents claim that KFC does not alter the sulfur black dye in any manner after it is purchased from the Chinese producer and imported into Hong Kong. Respondents contend that the sulfur dyes are subsequently exported to the United States.

Respondents cite numerous cases in which the Department considered the reseller provision where the reseller is located in the intermediate country, not the home market. Respondents state that the petitioner's circumvention argument is without merit as KFC's exports from Hong Kong are presently subject to estimated duty deposits, and if a dumping order is issued, KFC would be involved in any administrative review. Respondents refute petitioner's argument that the PRC producer sells to the middleman (*i.e*, the exporter and/or agent) because KFC is the only party that takes title to the merchandise, not the exporter, nor the agent. Finally, respondents state that petitioner intentionally misconstrued the statutory language so as to write the intermediate country reseller provision out of the statute or in the alternative, to attempt to confuse the Department so that it will find that KFC does not meet this provision.

Respondents state that it makes sense to interpret the statute as Congress intended it to be interpreted as the Department has done in the past. Respondents state that when the statute is examined, it is clear that the term "such country" refers to the intermediate country, but the term "the country" or "a country" refers to the countries to which the reseller in the intermediate country intends to export. Respondents state that Congress passed the intermediate country reseller provision to cover the situation where the reseller in the intermediate country is the source of the dumping because the reseller, not the companies in the home market, knows where the merchandise is being exported.

DOC Position

We agree with petitioner that KFC's exports to the United States do not enter the commerce of Hong Kong and, as such, KFC does not qualify under section 733(f)(4) the Act. We treated KFC as an intermediate country reseller under 773(f) in the preliminary determination based on KFC's characterization of these sales in its questionnaire response which appeared to satisfy the five requirements of section 773(f) of the Act. We determined, in fact, that the method of sale and distribution for KFC's sales to the United States is more accurately described as transshipment.

At verification we learned that KFC's characterization of this information in its questionnaire response was not entirely accurate. Specifically, the following things became clear: (1) Customers in both Hong Kong and the United States purchase dyes produced in different PRC factories; (2) the one Hong Kong customer of KFC purchased dye from a different PRC factory than the United States customer; (3) all merchandise exported to the United States was shipped from the PRC factory to KFC's rented warehouse in Shenzen, PRC; (4) all merchandise sold in Hong Kong was shipped from a different PRC factory, through the Shenzen warehouse, to KFC Hong Kong warehouse; (5) the merchandise bound for sale in Hong Kong was sold from inventory from KFC's Hong Kong warehouse; and (6) the merchandise bound for the United States was put on a truck in KFC's rented warehouse in Shenzen and trucked through Hong Kong directly to the port for shipment. Thus, from verification, we determined that the merchandise exported to the United States was shipped from the factory in the PRC to a warehouse in the PRC where it was, eventually, reloaded on a truck and driven directly to the port in Hong Kong for shipment to the United States. The above pattern of sale and distribution is most accurately characterized as transshipment.

Counsel for respondents argues that there is a "contingency of diversion" into the commerce of Hong Kong for the merchandise exported to the United States based on the fact that KFC files a document with Hong Kong Customs which would allow KFC to sell this merchandise in Hong Kong if it wanted to. Counsel states that there is a separate Hong Kong customs document for transshipment which KFC could use if they were merely transshipping.

However, verification clearly showed that KFC's exports to the United States were transshipped through Hong Kong. The fact the KFC files a customs document which would allow it to sell the merchandise in Hong Kong is not, in and of itself, sufficient evidence that this merchandise entered the commerce of Hong Kong. In a recent case, Preliminary Determination of Sales at Less Than Fair Value: Ferrosilicon From Kazakhstan, 58 FR 79 (January 4, 1993), we relied partially on the fact that merchandise entered a bonded warehouse as evidence the merchandise did not enter the commerce of that country. However, the fact that KFC does not store the sulfur dyes which are bound for export to the United States in a bonded warehouse in Hong Kong does not by itself demonstrate that the merchandise enters the commerce of Hong Kong. We must examine all of the

evidence on the record to determine whether merchandise enters the commerce of a country. In this case, KFC's sales to the United States are clearly transshipments which do not enter the commerce of Hong Kong, and as such, do not merit consideration under section 773(f) of the Act.

Accordingly, we do not reach petitioner's arguments regarding the interpretation of section 773(f) of the Act or KFC's sales in Hong Kong.

Comment 3

Respondents state that all factors were verified at Wuhan and although some reported factors differed from the amount verified, the differences were minor in most cases and adequately explained.

Regarding Wuhan, petitioner requests that the Department ignore the factors of production reported by respondents and use BIA or the factors verified and summarized at page seven of the verification report. Petitioner suggests that the Department resort to BIA for the input factors for skilled and unskilled packing labor as these items were not verified.

Petitioner notes a discrepancy between the amount KFC reports as Wuhan-produced sulfur dyes and the amount Wuhan reported produced during the POI. Petitioner concludes that some of the U.S. sales consist of sulfur dyes produced by factories other than Wuhan. Petitioner claims that it is significant that no invoices from Wuhan were produced at verification by either KFC, the agent, or the exporter. Petitioner states that KFC cannot demonstrate to the Department that the merchandise it sold to the United States was, in fact, produced by Wuhan. Finally, petitioner alleges that the unresolved conflict between the amounts reported by Wuhan and that sold to the United States together with the Department's inability to verify that the dyes exported to the United States were produced by Wuhan should result in the Department's resort to BIA. Petitioner urges the Department to reject KFC's oral representations and use the rate in the petition as BIA for the final determination.

DOC Position

We disagree with petitioner. The verification report spells out the mistakes in the information submitted by Wuhan which were noted at verification. The noted mistakes, when taken together, did not represent a verification failure meriting the use of BIA. Rather, we have followed our practice of correcting errors found at verification as long as those errors are not comprehensive nor do they exhibit a systematic misstatement of fact. Thus, we used the information in Wuhan's questionnaire response corrected for errors noted at verification.

Comment 4

Respondents state that the Department should treat Sinochem Shandong's claimed commission as a commission rather than as a discount as was done in the preliminary determination. Respondents state that it provided documentation at verification supporting the fact that the amount claimed is a commission. Respondents claim that its customer calls the amount a discount because it is advantageous for the customer to do so.

DOC Position

We disagree with respondents. A commission is a payment to a sales representative for engaging in sales activity on behalf of the seller. A discount is a reduction in price to a customer. That customer may well turn around and resell the merchandise; however, such resale would not change the discount into a commission. The entity that received this payment was a customer—not a salesman—who subsequently resold the merchandise. Accordingly, we determine that this payment is properly treated as a discount.

Comment 5

Respondents request that the Department offset the cost of raw materials by the revenue earned on the sale of sodium thiosulfate by the PRC factory during the POI.

DOC Position

We have not granted this adjustment. Respondents have not adequately demonstrated how the production and sale of sodium thiosulfate does, or could be used to, offset the material cost reported for production of the subject merchandise. In any event, only the quantity of material inputs used to produce the subject merchandise is relevant under the Act's factors methodology, not an NME producer's costs or alleged offsets.

Comment 6

Respondents request that, since the Department verified that Tianjin uses 25 kg. drums for packing, the Department value drums at one-half of the public price reported by Atul, the Indian respondent because the Indian drums are 50 kg.

DOC Position

We agree with respondents. At the preliminary determination we used the 50 kg. value because Tianjin's questionnaire response was unclear as to whether it used 25 or 50 kg. drums. At verification we determined that Tianjin did use 25 kg. drums.

Comment 7

Respondents argue that the Department, in its instructions to U.S. Customs, should not explicitly limit the application of the margin calculated for a given exporter (*e.g.*, SICC) solely to export transactions involving that exporter and its supplying factory (*e.g.*, Handan).

Petitioner states that, assuming a low margin for KFC compared to the other exporters, the factories would sell to the United States through KFC rather than thorough exporters having relatively higher dumping margins, thus circumventing an antidumping duty order. Further, petitioner states that because KFC was unable to submit invoices from the factories, the Department could not verify that the merchandise actually sold to the United States was the same as that reported by KFC.

DOC Position

We disagree with respondents. The LTFV margins for specific exporters, who qualified for separate rates in this case, are calculated based upon two factors: (1) FMV based on the factors of production of the PRC factory which supplied the specific exporter, valued in a surrogate country, and (2) USP based on the specific exporter's prices to unrelated customers in the United States. Any margin calculated using these two bases would only be representative of transactions involving these two parties and are only to be applied to imports of the listed manufacturer or producer which are exported by the listed exporter. Thus, any transaction covering other producers or other exporters would be covered by the "all others" rate.

Comment 8

Petitioner submits that the margin for KFC will exceed 25 percent and, following its administrative practice, the Department must impute knowledge of dumping by the importers pursuant to section 773(e)(1)(a)(ii) of the Act and determine that critical circumstances exist for KFC.

Respondents state that the Department has verified that neither SICC nor Sinochem Shandong's exports were massive after the petition was filed.

DOC Position

We agree with petitioner. See the Critical Circumstances section of this notice.

Comment 9

Petitioner states that the summary of the January 4, 1993, verification report regarding market rates and state control makes clear that these issues have been discussed previously with PRC officials. Petitioner asserts that the documents submitted during verification do not fully comply with the requests of the Department to substantiate the market and separate rate claims and, therefore, respondents' claim for separate rates and utilization of Chinese market prices should be rejected.

Respondents state that the Department should use actual Chinese costs to calculate costs in this case because the Chinese government for the first time has placed documentary evidence on the record of this investigation that the product subject to investigation and the raw material inputs are not subject to any state-mandated prices under the mandatory or the guidance plan.

Respondents state that the prices for the product subject to investigation and all the chemical inputs are freely set by the producers based on supply and demand in the Chinese market. Respondents state that there is virtually no government involvement in setting prices or amounts to be produced, the sulfur dyes industry is characterized by collective ownership, and market-determined prices are paid for all significant inputs and for an all but insignificant proportion of all the inputs accounting for the total value of sulfur black. Respondents also state that the Department verified that market prices were paid for all inputs and there was no state-required production for the inputs. Regarding labor, respondents state the factories are able to hire and fire workers based on the companies' needs and their workers' performances.

DOC Position

We disagree with respondents. See the **Separate Rates** and **Foreign Market Value** sections of this notice.

Comment 10

In determining the extent of state-required production in the input industries, respondents state that coal, electricity and foreign inland freight should not be included. Respondents claim that the Department should exclude coal, electricity and freight because these inputs represent an insignificant proportion of the total value according to the preliminary determination. Respondents further state that, should the Department determine that market prices can be used, then the Chinese market prices for coal, electricity and freight rates should be used to calculate the Chinese costs of production.

DOC Position

This issue is moot because we rejected the MOI claim for other reasons. See the **Foreign Market Value** section of this notice.

Comment 11

Petitioner contends that the sales dates reported by Sinochem Shandong are incorrect and the Department should use as BIA the rate provided in the petition as the sales reported are not within the POI.

Respondents submit that the terms of Sinochem Shandong's contract are not set until the merchandise is actually shipped. Respondents request that, as reported, the Department use the shipment date as the date of sale in the final determination.

DOC Position

We agree with respondents. We examined respondents' date of sale methodology at verification and determined that it was reasonable.

Comment 12

Petitioner contends that the Department should reject Tianjin's response and use BIA for the factors of production determination as the verification report is replete with discrepancies that taint the entire submission. Petitioner claims that respondents' eleventh hour disclosure of the true nature of the transactions resulted in the lack of any possibility of reviewing Tianjin's response for completeness. Petitioner submits that there were substantial discrepancies in Tianjin's submitted information including four different calculations in its labor hours, with the last version submitted at verification with amounts substantially below those reported in the three prior submissions. Petitioner states that the Department should reject as untimely its submission at verification regarding labor hours. In addition, petitioner states that the Department was unable to verify the division of the workers between production/packing and skilled/unskilled and, therefore, the submission at verification could not be substantiated. Finally, petitioner states that the inability of the Department to conduct a completeness test regarding Tianjin (and the failure to verify any data of the reseller) and the discrepancies permeating Tianjin's reported data requires the rejection of the response and the use of BIA as a basis of determining FMV.

Regarding labor, respondents state that Tianjin did not provide new labor factors at verification. Respondents state that the Department's verifier was provided with an exhibit which showed three calculation errors that had been made in the September 8, 1992, response. Respondents state that the only difference between the exhibit and the September submission were due to clerical calculation errors. Respondents request that the Department use the labor hours so calculated by the Department at verification in the final determination.

Respondents state that when petitioner quotes from the Tianjin verification report that "TDF has understated costs for all raw material inputs," the petitioner is referring to the market prices of the inputs, not the factors of production. Respondents also state that the factors provided by Tianjin were identical to the information provided in Tianjin's books and records. Therefore, respondents request that the Department accept the raw material input data supplied by the respondents.

Respondents state that petitioner claims, without basis, that the verifier could not perform a completeness test because respondents' November 9, 1992, submission was untimely. Respondents submit that there is no statement by the verifier that indicated that the November submission was untimely or resulted in the verifier being precluded from doing a completeness test. Respondents request that the Department use the data reported in the November submission in the final determination.

DOC Position

We disagree with petitioner. The verification report spells out the mistakes in the information submitted by Tianjin which were noted at verification. The noted mistakes, when taken together, do not represent a verification failure meriting the use of BIA. Rather, we have followed our practice of correcting errors found at verification as long as those errors are not comprehensive or exhibit a systematic misstatement of fact. Thus, we used the information in Tianjin's questionnaire response corrected for errors noted at verification.

Comment 13

Regarding SICC, petitioner states that the Department was unable to verify the reported marine insurance for respondents' U.S. sales. Petitioner states

that the formula requested to demonstrate how the marine insurance premium schedule would result in the marine insurance expense reported was never provided at verification. Petitioner suggests that as the respondents have failed to provide the requested information, the Department should resort to BIA for the marine insurance on respondents' U.S. sales.

Respondents state that at verification of SICC's producer, SICC provided a marine insurance premium schedule which includes the formula for marine insurance premiums. Respondents note that the insurance premiums reported were estimates slightly higher than the formula in the schedule. Respondents request that, since the formula was provided, the Department use the formula for SICC marine insurance for the final determination or use the average marine insurance as verified at Sinochem Shandong.

DOC Position

We agree with petitioners. Unlike the types of errors noted at verification discussed in comments 3 and 12, this was an error where information requested was not provided. Thus, this charge could not be verified. As BIA we have used the higher of the estimated amounts reported in the questionnaire response or the alleged amounts respondents indicated.

Comment 14

Petitioner states that the sales dates reported by SICC are incorrect, and the Department should use as BIA the rate provided in the petition as the reported U.S. sales are not within the POI.

Respondents state that the date of sale reported by SICC was the shipment date because the contract did not fix both price and quantity at the contract date. Respondents submit that additional information was provided at verification to support the claim that the shipment date was the earliest date at which both quantity and price were fixed. As such, respondents request that the Department use the shipment date as the date of sale as reported.

DOC Position

We agree with respondents. At verification we examined respondents' date of sale methodology and determined that it was reasonable.

Comment 15

Regarding Handan, petitioner states that the correct amount for water per metric ton of sulfur black noted in the verification report should be used.

DOC Position

This issue is moot because we have used a factory overhead rate that includes an amount for water. Hence, we do not need to value water separately.

Comment 16

Petitioner argues that because the Department did not verify certain information at the Jinan factory, an input supplier, the Department should draw adverse inferences about factor value information related to Jinan.

Respondents state that to infer that Tianjin should be penalized because the Department did not verify additional parties, such as Jinan, is unwarranted. Respondents argue that for the petitioner to ask the Department to use BIA because each item was not examined to the petitioner's satisfaction is absurd. Respondents request that the Department disregard petitioner's inaccurate and untrue arguments.

DOC Position

We agree with respondents. Given the time and resource constraints in an AD case involving an NME where a MOI claim is being evaluated, we must limit the number of suppliers, and supplier's suppliers, we visit during verification. Accordingly, no adverse inferences are warranted.

Comment 17

Petitioner states that the Department should substitute the verified marine insurance and freight for the estimated amounts reported in Sinochem Shandong's response.

Respondents agree with petitioner but suggest that the Department use the average verified marine insurance and freight.

DOC Position

We agree with petitioner.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of sulfur dyes, including sulfur vat dyes, from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer or producer/exporter	Margin percent	Critical circumstances
Sinochem Shandong/Tianjin.	34.96	Yes.
SICC/Handan	102.46	No.
KFC/Wuhan	191.00	Yes.
All others	213.16	Yes.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20.

Dated: February 1, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2841 Filed 2–5–93; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 92–097R. *Applicant:* Massachusetts Institute of Technology, Department of Chemistry, 77 Massachusetts Avenue, Cambridge, MA 02139. *Instrument:* Stopped Flow Spectrofluorimeter, Model DX.17MV. *Manufacturer:* Applied Photophysics,

United Kingdom. *Intended Use:* Original notice of this resubmitted application was published in the FEDERAL REGISTER of September 3, 1992.

Docket Number: 92–176. *Applicant:* Mayo Clinic, 200 First Street, S.W., Rochester, MN 55905. *Instrument:* Electron Microscope, Model CM 10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be available to all researchers at the clinic to characterize human tissue specimens and to determine pathology. In addition to standard tissue preparation techniques, methods for immunocytochemical localization of antigens will be employed. The instrument will also be used for training in TEM operation for graduate and medical students and residents. *Application Received by Commissioner of Customs:* December 8, 1992.

Docket Number: 92–179. *Applicant:* National Institute of Standards and Technology, Acquisition and Assistance Division, Building 301, Gaithersburg, MD 20899. *Instrument:* Thermal Neutron Chopper System. *Manufacturer:* Uranit, Germany. *Intended Use:* The instrument will be used for studies of a wide variety of chemical, biological and metallurgical samples, typically in the form of powders or crystals, at room temperature or at low temperatures. Experiments will consist of neutron scattering measurements using time-of-flight technique to determine the amount of energy transferred to the sample by the neutron when it is scattered. *Application Received by Commissioner of Customs:* December 8, 1992.

Docket Number: 92–180. *Applicant:* Good Samaritan Hospital and Medical Center, Robert S. Dow Neurological Sciences Institute, 1120 N.W. 20th Avenue, Portland, OR 97202-1595. *Instrument:* Motion Analysis System, Model Elite. *Manufacturer:* Bioengineering Technology and Systems, Italy. *Intended Use:* The instrument will be used in continuing research to determine how the central nervous system controls and coordinates limb movement and movement sequences in humans. Sample experiments include targeted limb movements in total darkness, and disturbing the posture of a subject who is balancing in the dark. In addition, the instrument will be used to teach trainees how to record and analyze human limb movement. *Application Received by Commissioner of Customs:* December 8, 1992.

Docket Number: 92–181. *Applicant:* Purdue University, West Lafayette, IN 47904. *Instrument:* Electron Paramagnetic Resonance Spectrometer System, Model ESP 300E-10/7. *Manufacturer:* Bruker Instruments, Germany. *Intended Use:* The instrument will be used for studies of free radicals or paramagnetic materials which may be present in the gas, liquid or solid phase. The experimental objective of these studies is to determine the exact chemical structure and nature of the chemical bonding in the material under investigation. Specialized experiments may be used to determine the rate of reaction of unstable materials containing free radical species. The concentration of these species may be determined for analytical purposes. The instrument will also be used in CHM courses 698 (M.S. Research) and 699 (Ph.D. Research) to provide fundamental background in EPR spectroscopy as used in an independent research application. *Application Received by Commissioner of Customs:* December 8, 1992.

Docket Number: 92-182. *Applicant:* Rockefeller University, 1230 York Avenue, New York, NY 10021. *Instrument:* Electron Microscope, Model CM 12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for biological research on the structures of assemblies of biological macromolecules. The materials to be studied will consist of complexes of proteins and nucleic acids (DNA and RNA) which have been biochemically purified at different stages of the processes of transcription (the synthesis of RNA from DNA). *Application Received by Commissioner of Customs:* December 8, 1992.

Docket Number: 92–183. *Applicant:* Department of Health and Human Services/PHS/NIH/NCI/DCPC/EDCOP/BPRB, 5516 Nicholson Lane, Kensington, MD 20895. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* Perkin-Elmer/Sciex, Canada. *Intended Use:* The instrument will be used for studies of native proteins, synthetic peptides, synthetic oligonucleotides and glycoproteins/peptides. The properties to be studied include the amino acid sequence of native proteins and synthetic peptides, nucleotide sequence, post-translational modifications and blocking groups of native proteins. *Application Received by Commissioner of Customs:* December 8, 1992.

Docket Number: 92–184. *Applicant:* University of Illinois at Chicago, Department of Chemistry (m/c 111), 801 W. Taylor Street, Room 4500, Chicago, IL 60607–7061. *Instrument:* Excimer-pumped Dye Lasers, Models LEXtra 50 and LPD 3002. *Manufacturer:* Lambda Physik, Germany. *Intended Use:* The instrument will be used to detect hydrogen chloride (HC1) molecules generated in photodissociation reactions. The instrument will be incorporated into an existing apparatus. HC1 molecules will be generated in a molecular beam machine, utilizing an already existing laser to dissociate gaseous molecules in the beam. The new laser will then be used to ionize the fragment HC1, which will be detected by a mass spectrometer. *Application Received by Commissioner of Customs:* December 9, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–2842 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-DS-F

Vanderbilt University; Notice of Decision on Application for Duty-free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

DECISION: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

REASONS: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 92–079. *Applicant:* Vanderbilt University, School of Medicine, 23rd Avenue South at Pierce, Nashville, TN 37232–6600. *Instrument:* Micromanipulator, Model MM–113–L. *Manufacturer:* Narishige, Japan. *Date of Denial without Prejudice to Resubmission:* October 27, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–2844 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-DS-F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of

equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 92–083R. *Applicant:* Washington University, One Brookings Drive, St. Louis, MO 63130. *Instrument:* Two Micromanipulators, Models WR-89-R and MM-113-R. *Manufacturer:* Narishige Scientific Instruments, Japan. *Intended Use:* Original notice of this resubmitted application was published in the **Federal Register** of July 9, 1992.

Docket Number: 92–185. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* Mass Spectrometer, Model VG Sector 54. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used for studies of a variety of metals and compounds containing uranium, plutonium, boron, lithium, americium, curium, and other elements of interest in the nuclear field. *Application Received by Commissioner of Customs:* December 18, 1992.

Docket Number: 92–186. *Applicant:* University of Arkansas, Department of Chemistry, Fayetteville, AR 72701. *Instrument:* Rapid Kinetics Spectrometer Accessory, Model RX.1000. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used for investigating the kinetics of the reactions of NADH model compounds with various carbonyl hydride acceptors in order to gain insight into the mechanisms of corresponding enzyme catalyzed reactions. *Application Received by Commissioner of Customs:* December 17, 1992.

Docket Number: 92–187. *Applicant:* Mary Free Bed Hospital and Rehabilitation Center, 235 Wealthy Street, S.E., Grand Rapids, MI 49503. *Instrument:* Kinematic Analysis Instrumentation, Model Elite 3D. *Manufacturer:* BTS Bioengineering Technology and Systems, Italy. *Intended Use:* The instrument will be used for studies of human patients with cerebral palsy and congenital or traumatic amputation. Research questions involve how to improve abnormal gait with a variety of therapy techniques (physical therapy), orthoses (braces), tendon lengthening or shortening, bone surgery or prostheses (artificial limbs). In addition, the instrument will be used in physical therapy courses for thesis research in the motion analysis laboratory. *Application Received by Commissioner of Customs:* December 15, 1992.

Docket Number: 92–188. *Applicant:* University of California, Santa Barbara, Department of Geological Sciences, Santa Barbara, CA 93106-9630. *Instrument:* Electron Microprobe, Model SX-50. *Manufacturer:* Cameca Instruments, Inc., France. *Intended Use:* The instrument will be used for quantitative elemental microanalysis of polished rock and mineral specimens, ceramics, mineral particulates, metals and composite materials. Electron microprobe data will be used to determine various physical parameters (pressure, temperature, water content, solubilities) attendant to geologic processes in the earth's crust mantle. In addition, the instrument will be used for educational purposes in the courses: GEOL 128 "Advanced Mineralogy," GEOL 227 "Mineral Paragenesis" and GEOL 227L "Laboratory, Mineral Paragenesis." *Application Received by Commissioner of Customs:* December 18, 1992.

Docket Number: 92–189. *Applicant:* Scripps Clinic and Research Foundation, Scripps Research Institute, 10666 North Torrey Pines Road, La Jolla, CA 92037. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* PE Sciex, Canada. *Intended Use:* The instrument will be used in fundamental biological research involving peptides and proteins. Almost all of the research involves the identification of a post-translational modification and the precise location of that modified residue within the amino acid sequence of the peptide and/or protein. In particular, the research projects will make routine use of the most advanced commercially currently available reverse phase HPLC methods for the separation and direct introduction of proteins and peptides into the mass spectrometer. *Application Received by Commissioner of Customs:* December 18, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–2843 Filed 2–5–93; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Salmon Technical Team will hold a public meeting on February 16–19, 1993, at the Council's office (address below).

The meeting will begin on February 16 at 10 a.m. to draft the 1993 stock status report. This report will be distributed to the public about March 1, 1993, and reviewed at the Council meeting in Burlingame, California on March 9.

Oral or written statements pertaining to salmon abundance projections will be accepted at appropriate times during the meeting session.

For more information contact John Coon, Staff Officer (Salmon), Pacific Fishery Management Council, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: February 2, 1993.

David S. Crestin,

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

[FR Doc. 93–2866 Filed 2–5–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

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

ACTION: Issuance of Modification No. 1 to Permit No. 732 (P423A).

SUMMARY: On February 25, 1991, notice was published in the **Federal Register** (56 FR 7683) that Permit No. 732 had been issued to Dr. Mary L. Moser and Mr. Steve W. Ross.

Notice is hereby given that on February 2, 1993, as authorized by the provisions of the Endangered Species Act (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222), the National Marine Fisheries Service modified Permit No. 732 to extend the effective date through March 31, 1996.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in

accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

This Modification became effective upon signature.

The Permit and Modification documentation are available for review in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, MD 20910 (301/713–2289); and

Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: February 2, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–2955 Filed 2–5–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTIONS: Issuance of Scientific Research Permit (P523).

On November 20, 1992, notice was published in the **Federal Register** (57 FR 54771) that an application had been filed by Adam Frankel, University of Hawaii at Manoa, Department of Oceanography, 1000 Pope Road, Honolulu, HI 96822, for a permit to approach up to 1000 humpback whales (*Megaptera novaeangliae*) annually over a five-year period during the course of acoustic playback experiments and photo-identification, observational studies.

Notice is hereby given that on February 1, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a permit to the above applicant to harass the species/numbers of marine mammals described above during the 1993 field season, subject to certain conditions set forth therein.

Issuance of this permit, as required by the Endangered Species Act of 1973, is based on the findings that the permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the Act. This permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The permit and associated documents are available for review, by appointment, in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90801–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, NOAA, 2570 Dole Street, Honolulu, HI 96822–2396 (808/955–8831).

Dated: February 1, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–2971 Filed 2–5–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

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

ACTION: Request for Modification of Permit No. 782 (P771#61).

Notice is hereby given that the National Marine Mammal Laboratory, Alaska Fisheries Science Center, Northwest Region, 7600 Sand Point Way, NE. BIN C15700—Building 1, Seattle, WA 98115–0070, requested a modification to Permit No. 782, issued on May 26, 1992 (57 FR 24597), as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 782 currently authorizes studies of immune response in California sea lions. The applicant is now requesting authorization to recapture 50 of 200 previously immunized animals for further evaluation of the competence of their immune systems.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289);

Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE. BIN C15700—Building 1, Seattle, WA 98115–0070 (206/526–6150); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016).

Dated: February 2, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–2972 Filed 2–5–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

February 2, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: February 9, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56328, published on November 27, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 2, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 20, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on February 9, 1993, you are directed to amend the directive dated November 20, 1992 to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
340/640	1,410,750 dozen.
341	3,160,655 dozen of which not more than 2,012,499 dozen shall be in Category 341-Y [2].
369-S [3]	480,000 kilograms.
641	990,200 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.
[2] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.
[3] Category 369-S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-2921 Filed 2-5-93; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of an Import Limit and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

February 2, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit and guaranteed access levels.

EFFECTIVE DATE: February 9, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has agreed to increase the 1993 guaranteed access levels for Categories 352/652 and 632. Also, in a Memorandum of Understanding dated January 15, 1993, the Governments of the United States and Jamaica agreed to convert the 1993 designated consultation level for Categories 352/652 to a specific limit at an increased level.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 60512, published on December 21, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 2, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on February 9, 1993, you are directed to amend the December 15, 1992 directive to increase the limit for Categories 352/652 to 1,500,000 dozen [1].

Also, you are directed to increase the guaranteed access levels for the following categories:

Category	Amended guaranteed access level
352/652	8,000,000 dozen.
632	4,500,000 dozen pairs.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-2920 Filed 2-5-93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

OMB Clearance Request for Cost Impact Proposals

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of new request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44

[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

U.S.C. ch. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection system pertaining to cost impact proposals submitted under cost Accounting Standards Administration requirements.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, Office of Management and Budget, New Executive Office Building, room 3235, 1725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 30.6 and 52.230-5 include pertinent rules and regulations related to the Cost Accounting Standards along with necessary administrative policies and procedures. These administrative policies require certain contractors to submit cost impact estimates and descriptions of changes in cost accounting practices and also to provide information on CAS-covered subcontractors.

The information is used by contracting officers to ensure that the contractors and subcontractors comply with pertinent CAS requirements.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *644;* responses per respondent, *2.27;* total annual responses, *1,462;* hours per response, *200;* and total response burden hours, *292,400.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of Office of Management and Budget applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington DC 20405, telephone (202) 501-4755. Please cite OMB clearance request regarding Cost Accounting Standards Administration, in all correspondence.

Dated: January 27, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93-2855 Filed 2-5-93; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Nuclear Agency

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Nuclear Agency will meet in closed session on February 18-19 at Lawrence Livermore National Laboratory, El Segundo, California and on March 4-5, 1993 at 1700 N. Moore Street, Rosslyn, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the technology base program and technology application programs of the Defense Nuclear Agency (DNA) to determine the impact on national security of the possible cessation of underground nuclear weapons effects testing, and the planned reduction in developing new nuclear-survivable weapon systems.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: February 2, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 93-2834 Filed 2-5-93; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Global Surveillance; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Global Surveillance will meet in closed session on February 16-17, May 4-5, and July 7-8, 1993, in the Washington, DC area.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine and make recommendations on the global surveillance needs of the DoD for the future including: operational needs, systems architecture, system elements, and technologies.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: February 2, 1993.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-2835 Filed 2-5-93; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on March 10-11, May 12-13, and October 20-21, 1993 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Defense Science Board will discuss interim findings and tentative recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: February 2, 1993.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-2836 Filed 2-5-93; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Mid Course Panel of the USAF Scientific Advisory Board's Committee

on Options for Theater Air Defense will meet on 3 March 1993, at Huntsville, AL from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 93–2888 Filed 2–5–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board Meeting

The Cruise Missile Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 18–19 March 1993, at The ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–2885 Filed 2–5–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The Boost Phase Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 24 March 1993, at the ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–2886 Filed 2–5–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on March 25–26, 1993, at The ANSER Corporation, Crystal Gateway 3, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–2934 Filed 2–5–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board Meeting

The Mid Course Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 12 April 1993, at San Antonio, TX from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–2887 Filed 2–5–93; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Notice of Announcement of Dates, Locations, and Times for Public Scoping Meetings on the Programmatic Environmental Impact Statement for the Ground-Water Restoration Phase of the Uranium Mill Tailings Remedial Action Project

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy (DOE) announced on November 18, 1992, (57 FR 54374–7) its intent to prepare a programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) to assess the potential environmental consequences of the alternatives for conducting a ground-water compliance program for inactive mill tailings sites under the Uranium Mill Tailings Radiation Control Act (UMTRCA), and to conduct a series of public scoping meetings. This **Federal Register** Notice supplements the November 18, 1992, issuance and provides the dates and locations for the public scoping meetings to be held in February, March, and April 1993.

DATES: The public is invited to submit comments on the scope of the Uranium Mill Tailings Remedial Action (UMTRA) Ground-Water PEIS. A total of 13 public scoping meetings are scheduled to be held to receive comments on the PEIS from December 1992 through April 1993. Two scoping meetings were conducted in December 1992; the dates and locations of the 11 remaining public scoping meetings are provided below under Locations of Public Scoping Meetings. The specific meeting places and times of the scoping meetings will be announced in local media at least 15 days before each planned meeting. To ensure consideration in preparation of the PEIS, comments should be postmarked by April 23, 1993. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Written comments on the scope of the UMTRA Ground-Water PEIS, requests to speak at the scoping meetings, and questions concerning the UMTRA Project should be directed to: Mr. Albert Chernoff, Project Manager, UMTRA Project Officer, U.S. Department of Energy, 5301 Central Avenue, NE., suite 1720, Albuquerque, New Mexico 87108, (505) 845–4628, Fax comments to: (505) 845–4023.

FOR FURTHER INFORMATION: For further information on the DOE NEPA process, contact: Ms. Carol M. Borgstrom,

Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: For the reader's convenience, the following summary is repeated from the Notice of Intent DOE published on November 18, 1992 (57 FR 54374-7), from which further details may be obtained.

Background

The purpose of the UMTRA Ground-Water PEIS is to develop a strategy for determining the appropriate ground-water compliance method(s) to be implemented at the 24 UMTRA Project sites. The UMTRA Ground-Water PEIS will include discussions of the potential methods of complying with the U.S. Environmental Protection Agency's ground-water cleanup standards, such as restoring ground water to background levels; restoring ground water to health-based levels referred to as maximum concentration limits; restoring ground water to less restrictive alternate concentration levels that would still protect human health and the environment; and applying site-specific supplemental standards. The PEIS will evaluate a range of ground-water remediation approaches and technologies, ranging from passive remediation methods such as natural flushing to active methods such as extraction and treatment of the contaminated ground water. The PEIS will assess the programmatic environmental impacts, including cumulative impacts, associated with the different alternatives. DOE intends to prepare additional NEPA documents [i.e., environmental assessments (EAs)] for UMTRA Project sites where ground-water compliance actions will be needed as specified in the PEIS Record of Decision (ROD). The EAs will tier off the PEIS and will incorporate other existing NEPA documents and technical reports by reference. These EAs will provide site-specific analyses of environmental issues such as floodplains and wetlands, cultural resources, threatened and endangered species, etc.

Public Scoping Meetings and Invitation to Comment

DOE is committed to providing opportunities for public involvement by individuals and organizations in this and other DOE planning activities. The public scoping process began with the November 18, 1992, **Federal Register** announcement that DOE will prepare a PEIS to assess the potential environmental consequences of the alternatives for conducting a ground-water compliance program for inactive mill tailings sites under UMTRCA. To ensure that a full range of issues related to ground-water compliance at the UMTRA Project sites is addressed, DOE invites oral and written comments on the proposed scope of the UMTRA Ground-Water PEIS from all interested parties. Written comments can be submitted without attending a public scoping meeting by sending the comments to the location specified above under **ADDRESSES**. Written comments will also be accepted at the scoping meeting. Written and oral comments will be given equal weight in defining the scope of the PEIS and issues to be addressed. As previously mentioned, to ensure consideration in preparation of the PEIS, written comments should be postmarked by April 23, 1993.

Comments received after this date will be considered to the extent practicable.

The scoping meetings will begin with a welcome and introduction, followed by short presentations by DOE officials on the PEIS process and the UMTRA Project. Interested individuals and organization spokespersons will then have an opportunity to present oral comments to DOE representatives. DOE will not conduct the scoping meetings as evidentiary hearings and will not cross-examine the speakers. However, DOE representatives may ask questions for clarification. Individuals requesting to speak on behalf of an organization must identify the organization. To ensure that all who wish to speak have an opportunity, a 5-minute limit will be imposed on each individual speaker and a 10-minute limit on speakers representing organizations. Comments will be recorded and will become part of the scoping meeting record. Speakers are encouraged to provide a written copy of their oral comments for the record during the meeting.

Before the public scoping meetings, DOE will conduct informal orientation meetings designed to facilitate the maximum possible interchange between the public and DOE. At these meetings, the public will be given a brief overview of the ground-water compliance phase of the UMTRA Project. The meetings will then be opened up to all participants for discussion. The dates, times, and locations of these meetings will be announced in the local media.

After the public scoping process is complete, an UMTRA Ground-Water PEIS Implementation Plan (IP) will be prepared and made available to the public. The IP will record the results of the scoping process and describe the alternatives and issues to be evaluated in the UMTRA Ground-Water Project PEIS. DOE intends to complete the draft PEIS by late 1993. Availability of the draft PEIS will be announced in the **Federal Register**, and public comments will be solicited. Comments on the draft PEIS will be considered in identifying and evaluating issues and alternatives and in preparing the final UMTRA Ground-Water Project PEIS. DOE expects to issue the final PEIS, including responses to public comments received on the draft PEIS, by late 1994. DOE will select a remedial action alternative in the ROD to be issued no sooner than 30 days after the final PEIS is issued. Following completion of the UMTRA Ground-Water Project PEIS and ROD, a Mitigation Action Plan (MAP) that addresses mitigation commitments expressed in the ROD will be prepared. No action directed by the ROD that is the subject of a mitigation commitment will take place before the MAP is prepared.

When completed, copies of the scoping meeting transcripts, the IP, and major references used in preparing the UMTRA Ground-Water PEIS will be available at the DOE Public Reading Room, DOE National Atomic Museum, Kirtland Air Force Base, Building 20358, Albuquerque, NM 87185-5400, Monday through Friday, during business hours (9 a.m. to 5 p.m.). The transcript of each scoping meeting will also be made available for inspection at the DOE Freedom of Information Reading Room (room 1E-190), Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, during business hours (9 a.m. to 4 p.m.).

Those persons who do not wish to submit comments or suggestions during the scoping period but who would like to receive a copy of the draft PEIS for review and comment should notify Mr. Albert Chernoff at the address listed above.

Location of Public Scoping Meetings

Public scoping meetings will be held in 13 locations; the first two scoping meetings were held in Falls City, Texas, and Durango, Colorado, on December 8, 1992, and December 10, 1992, respectively.

The 11 remaining public scoping meetings will be held at the locations and dates provided below. Times and specific meeting places will be announced in the local public media at least 15 days in advance of the planned meetings.

Gunnison, Colorado—February 24, 1993
Riverton, Wyoming—March 9, 1993

Bowman, North Dakota—March 18, 1993
Window Rock, Arizona—March 23, 1993
Tuba City, Arizona—March 24, 1993
Moenkopi, Arizona—March 25, 1993
Canonsburg, Pennsylvania—April 1, 1993
Rifle, Colorado—April 6, 1993
Grand Junction, Colorado—April 8, 1993
Salt Lake City, Utah—April 13, 1993
Lakeview, Oregon—April 15, 1993

Issued in Washington, DC, this 3d day of February, 1993.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93-2967 Filed 2-5-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF87-429-002]

Onondaga Cogeneration Limited Partnership; Supplement to Filing

February 2, 1993.

On January 29, 1993, Onondaga Cogeneration Limited Partnership (Applicant) tendered for filing a second supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the technical data and the ownership structure of the cogeneration facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by February 19, 1993, and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2942 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER92-338-000, et al.]

Rochester Gas & Electric Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 29, 1993.

Take notice that the following filings have been made with the Commission:

1. Rochester Gas and Electric Corp.

[Docket No. ER93-338-000]

Take notice that on January 25, 1993, Rochester Gas and Electric Corporation, a member of the New York Power Pool (NYPP), filed with the Commission the Station 80 Capacitor Facilities Agreement between itself and the other members of NYPP. Under this Agreement, Rochester will purchase, own, install, operate and maintain a 345 kV capacitor bank and associated facilities (Capacitor) installed on the 345 kV bus of the Station 80 terminal of the NYPP cross-state 345 kV transmission system, will be reimbursed for the annual charges on the Capacitor and for expenses incurred by it in the installation, maintenance and operation thereof.

Rochester requests that the proposed amendment be made effective as of January 1, 1991, and states that all parties to the Agreement have agreed to the proposed effective date. Rochester further states that copies of the filing were served on the parties and on the New York State Public Service Commission.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corp.

[Docket Nos. ER93-238-000, ER93-239-000, ER93-240-000]

Take notice that Central Vermont Public Service Corporation (Central Vermont) on January 25, 1993, tendered for filing amendments to its filing of the Forecast 1993 Cost Reports in the referenced dockets to reflect a return on common equity of 10.9% in all three cost repairs.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. PSI Energy, Inc.

[Docket No. ER92-653-000]

Take notice that PSI Energy, Inc. (PSI) and Indianapolis Power & Light Company (IP&L) on January 25, 1993, tendered for filing amended Service Schedules to the FERC Filing in Docket No. ER92-653-000 to comply with a Letter Order dated October 27, 1992.

Copies of the filing were served on Indianapolis Power and Light Company and the Indiana Utility Regulatory Commission.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Co.

[Docket No. ER93-21-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on January 26, 1993, tendered for filing an amendment to its October 14 filing in this docket. The amendment contains cost documentation and a one-line diagram in response to the Director of the Division of Application's deficiency letter dated December 31, 1992.

Wisconsin Electric renews its request for an effective date of December 14, 1990. Wisconsin Electric is authorized to state that Wisconsin Public Service Corporation (WPS) joins in the requested effective date.

Copies of the filing have been served on WPS, the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment date: February 12, 1993, in accordance with Standard paragraph E at the end of this notice.

5. Iowa Power Inc.

[Docket No. ER92-228-000]

Take notice that on January 7, 1993, Iowa Power Inc. (Iowa Power) tendered for filing the third amendment to the original filing for this docket dated January 27, 1992.

Iowa Power states that the third amendment to the filing provides for a fully executed Exhibit F of the General Facilities Agreement between Midwest Power and Central Iowa Power Cooperative (CIPCO).

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Connecticut Yankee Atomic Power Co.

[Docket Nos. ER93-85-001 and EL93-7-001]

Take notice that on January 21, 1993 Connecticut Yankee Atomic Power Company tendered for filing its compliance filing in the above-referenced dockets.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corp.

[Docket No. ER93-333-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk) on January 19, 1993, tendered for filing an agreement between Niagara Mohawk and Northeast Utilities Services Company (NUSCO) dated December 10,

1992 providing for certain transmission services to NUSCO.

An effective date of March 22, 1993 is proposed.

Copies of this filing were served upon NUSCO and the New York State Public Service Commission.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Power & Light Co.

[Docket No. ER93-183-000]

Take notice that on January 1, 1993, Puget Sound Power & Light Company (Puget) tendered for filing information relating to service under Rate Schedule FERC No. 78 or construction, relocation, operation, maintenance or ownership of facilities by Puget or the City of Seattle (Seattle). A copy of the filing was served upon Seattle.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Big Three Industries, Inc.

[Docket No. QF93-40-000]

On January 15, 1993, Big Three Industries, Inc. of 3535 West 12th Street, Houston, Texas 77008, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in Port Neches, Texas, and will consist of a combustion turbine generator and a supplementary fired heat recovery boiler (HRB). Steam recovered from the HRB will be used by Texaco Chemical Corp. for manufacturing of basic chemicals. The electric power production capacity of the facility will be approximately 38 MW. The Primary energy source will be natural gas. Construction of the facility commenced in December 1, 1992.

Comment date: March 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Rye Patch Limited Partnership

[Docket No. QF92-186-002]

On January 21, 1993, Rye Patch Limited Partnership of Building One, Suite 255, 4000 Kruse Way Place, Lake Oswego, Oregon 97035, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The geothermal small power production facility will be located near Lovelock, in Pershing County, Nevada. The net electric power production will be approximately 15 MW. The primary energy source will be geothermal brine and steam.

Comment date: March 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Orlando CoGen Limited, L.P.

[Docket No. QF91-233-003]

On January 22, 1993, Orlando CoGen Limited, L.P. 7201 Hamilton Boulevard, Allentown, Pennsylvania 18195-1501, 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 will be located in Orange County, Florida. The Commission previously certified the facility as a qualifying cogneration facility, Orlando CoGen Limited, L.P., 58 FERC ¶ 62,166 (1992). The instant request for recertification is due to a change in ownership. Through subsidiaries, UtiliCorp United Inc., an electric utility will have a 50% interest in the facility.

Comment date: March 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Arizona Public Service Company

[Docket No. ER93-337-000]

Take notice that on January 25, 1993, Arizona Public Service Company (APS) tendered for filing revised estimated load and contract demand Exhibits applicable under the following rate schedules:

APS-FPC/ FERC No.	Customer	Exhibit name
66	San Carlos Irrigation Project.	Exhibit "A".
140	Electrical District No. 8.	Exhibit "II".
143	Tonopah Irrigation District.	Exhibit "II".
153	Harquahala Valley Power District.	Exhibit "II".
155	Buckeye Water Cons. & Drainage District.	Exhibit "II".
158	Roosevelt Irrigation District.	Exhibit "II".
168	Maricopa Water District.	Exhibit "II".

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

A copy of this filing has been served on the above customers and the Arizona Corporation Commission.

Comment date: February 12, 1993, 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 NW., 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. 93-2862 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93-173-000, et al.]

Williams Natural Gas Co. et al.; Natural Gas Certificate Filings

January 29, 1993.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Co.

[Docket No. CP93-173-000]

Take notice that on January 22, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93-173-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to abandon the sale of gas for resale to The Town of Gate, Oklahoma, in Beaver County, Oklahoma, under its blanket certificate issued in Docket No. CP82-479-000 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.

WNG states that The Town of Gate has requested cancellation of its firm sales agreement under WNG's Rate

Schedule F. It is stated that the most recent annual volume of gas delivered to The Town of Gate for resale was 4,643 dekatherms with a peak day volume of 950 dekatherms. It is further stated that annual transportation volumes for the same period were 4,805 dekatherms with a peak day volume of 510 dekatherms.

WNG states that The Town of Gate has an existing firm transportation agreement which will take the place of the resale sales agreement effective January 1, 1993. It is stated that the firm transportation agreement was reported in Docket No. ST92-988-000. It is further stated that all facilities will remain in place and will be available for the delivery of transportation gas.

Comment date: March 16, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP93-181-000]

Take notice that on January 26, 1993, Arkla Energy Resources (AER), a division of Arkla, Inc. (Arkla), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP93-181-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate six existing intrastate pipeline interconnections as jurisdictional facilities under its blanket certificates issued in Docket Nos. CP88-820-000, CP82-384-000 and CP82-348-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER states that it seeks authority to operate, under subpart G of part 284 of the Commission's Regulations, the following six existing interconnections with intrastate pipelines which were initially constructed solely to provide services authorized under section 311 of the Natural Gas Policy Act and Subpart B of the Commission Regulations: (1) An interconnection with Louisiana Intrastate Gas Corporation located in Section 32, Township 20 North, Range 4 East, Ouachita Parish, Louisiana constructed at a cost of $51,844.40; (2) an interconnection with Concord Pipeline located in Section 39, Township 20 North, Range 4 East, Ouachita Parish, Louisiana constructed at a cost of $97,058.98; (3) an interconnection with Intersearch Gas Corporation located in A-3 Gray B. King Survey, Wood County, Texas constructed at a cost of $17,836.63; (4) an interconnection with Red River Pipeline located in Section 27, Block M-1, H&GN Survey, Hemphill County, Texas constructed at a cost of $2,357,823.27; (5) an interconnection with Pine Pipeline Company located in Section 23, Township 18 North, Range 2 East, Ouachita Parish, Louisiana constructed at a cost of $163,554.95; and (6) an interconnection with Delhi Gas Pipeline Corporation located in Section 25, Township 14 North, Range 15 West, Custer County, Oklahoma constructed at a cost of $7,824.28.

Comment date: March 16, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corp.

[Docket No. CP93-164-000]

Take notice that on January 21, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP93-164-000 a request pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon certain natural gas facilities, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia states that it would abandon from service a leased 880-horsepower compressor unit located in Suffolk, Virginia. It is stated that the unit was originally installed for standby service by Commonwealth Gas Pipeline Corporation, Columbia's predecessor. It is also stated that the need for standby service was eliminated with completion of Columbia's line between its Petersburg Compressor Station and Emporia Compressor Station.

It is estimated said proposal would reduce Columbia's lease expenses by $9,500 per month. It is further stated the execution of said proposal would cost approximately $90,000. Columbia is proposing to charge said cost to an expense account.

Comment date: February 19, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Colorado Interstate Gas Co. and Questar Pipeline Co.

[Docket No. CP93-182-000]

Take notice that on January 26, 1993, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, and Questar Pipeline Company (Questar), P.O. Box 11450, Salt Lake City, Utah 84147, filed jointly in Docket No. CP93-182-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain services involving the transportation and exchange of natural gas,[1] all as more fully set forth in the application on file with the Commission and open to public inspection.

CIG and Questar propose to abandon the services performed by the parties pursuant to an agreement dated December 8, 1980, on file as CIG's Rate Schedule X-49 and Questar's Rate Schedule X-32. It is stated that the agreement provides for the transportation and exchange of natural gas supplies which are remote from each party's transmission system but which are located in the vicinity of the other party's transmission system. It is further stated that the parties have agreed to terminate the agreement on the expiration of the primary term, April 1, 1993, and to replace any required transportation services provided thereunder with open-access transportation services. Also, it is stated that this abandonment proposal is consistent with Questar's settlement negotiations in Docket No. RP91-140. CIG and Questar thus request that abandonment authorization be made effective on April 1, 1993.

It is stated that no facilities are proposed to be abandoned.

Comment date: February 19, 1993, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said 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

[1] See 21 FERC ¶ 61,197 (1982).

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. 93-2863 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-661-023]

Algonquin Gas Transmission Co.; Notice of Application

February 2, 1993.

Take notice that on February 1, 1993, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed an application under section 7(c) of the Natural Gas Act requesting authority to amend a certificate of public convenience and necessity issued to it on June 26, 1990, in Docket No. CP89-661-000 and 001 (51 FERC ¶ 61,359 (1990)) and on October 9, 1991, in Docket No. CP89-661-004 (57 FERC ¶ 61,048 (1991)). Algonquinproposes to substitute 18-inch pipe for 24-inch pipe previously authorized for the Providence Harbor crossing and to make minor modifications to the meter station at the Manchester Street electric generating station of New England Power Company (NEP) in Providence, Rhode Island, if necessary, to compensate for any discernible reduction in pressure on the harbor crossing from the use of 18-inch pipe. A copy of Algonquin's application is on file at the Commission and is open for public inspection.

Algonquin has been authorized to construct a 3.9 mile, 24-inch lateral for service to NEP at its Manchester Street electric generating station. The Manchester Street lateral includes a 4,000 foot segment that runs underneath Providence Harbor. As a result of problems encountered by Algonquin in reaming a 36-inch hole underneath Providence Harbor in order to accommodate the 24-inch pipeline, Algonquin has decided to substitute 18-inch pipe for the 24-inch pipe originally authorized for the crossing. According to Algonquin, the modifications will still allow certificated service to NEP, thus enabling Algonquin to deliver full contract volumes at 350 psig.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before February 9, 1993, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211) 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2940 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA93-1-31-000]

Arkla Energy Resources; Notice of Annual PGA Filing

February 2, 1993.

Take notice that on January 29, 1993, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing six copies of the following revised tariff sheets to become effective April 1, 1993:

Rate Schedule No. X-26

Original Volume No. 3
Twenty-Second Revised Sheet No. 185.1

Rate Schedule No. G-2

Second Revised Volume No. 1
Seventeenth Revised Sheet No. 11

Rate Schedule No. CD
Second Revised Volume No. 1
Seventeenth Revised Sheet No. 16

These tariff sheets reflect AER's fifth Annual PGA filing made pursuant to the Commission's rules under Order Nos. 483 and 483-A.

The proposed changes reflect a decrease in AER's system cost of $994,573.

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 February 18, 1993. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2939 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-70-000]

Black Marlin Pipeline Co.; Proposed Changes to FERC Gas Tariff

February 2, 1993.

Take notice that on January 29, 1993 Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of its FERC Gas Tariff the following tariff sheet to be effective March 1, 1993:

Third Revised Sheet No. 4

Black Marlin states that it is making this filing to (1) provide an increase in rates for its transportation services and (2) effectuate a Straight Fixed Variable cost classification, allocation, and rate design.

The tariff sheet filed herein reflects rates necessary to recover annual operating costs which Black Marlin expects to incur in performing service under its existing rate schedules, utilizing a base period ended October 31, 1992, adjusted for known and measurable changes anticipated to occur during the nine-month period ending July 31, 1993.

The proposed rates are based on an overall cost of service for Black Marlin's jurisdictional services of $3.85 million (exclusive of the cost of service associated with Black Marlin's onshore

311 facilities and Webb County), as compared to a cost of service of $3.57 million underlying the currently effective rates. Absent the instant rate case, Black Marlin would realize a revenue deficiency of $1.4 million as indicated by comparing the proposed rates with the currently effective rates applied to the test period volumes.

The major reasons for the proposed rate increase are (1) increases in operation and maintenance expenses; (2) an increase in Black Marlin's return on its net investment; and (3) a decrease in test period annual throughput to 27,042,046 based on known and measurable declines in the deliverability in the production area to which Black Marlin is connected.

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 §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1993.

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. 93-2948 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-4-63-000 and TM93-4-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that on January 29, 1993, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Fortieth Revised Sheet No. 8
Fortieth Revised Sheet No. 9

Carnegie states that pursuant to Sections 23 and 26 of the General Terms and Conditions of its FERC Gas Tariff, it is filing a combined Quarterly Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") to reflect changes in its projected purchased gas costs and projected Account No. 858 costs.

The revised rates are proposed to become effective March 1, 1993, and reflect the following changes from Carnegie's last quarterly PGA filing in Docket No. TQ93-2-63-000, which the Commission approved by Letter Order issued on November 24, 1992: a $0.2431 per dth decrease in the demand rate, a $0.7175 per dth decrease in the commodity rate, and a $0.0080 per dth decrease in the DCA rate of its CDS and LVWS rate schedules; a $0.7255 per dth decrease in the maximum commodity rate and a $0.7175 per Dth decrease in the minimum commodity rate under Rate Schedule SEGSS. The revised tariff sheets also reflect a TCA rate increase of $0.0514 per Dth, from $0.1202 per Dth to $0.1716 per Dth, as compared to Carnegie's most recent TCA filing in Docket No. TM93-2-63-000, filed on October 30, 1992 in conjunction with Carnegie's last quarterly PGA.

Carnegie states that copies of its filing were served on all 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 February 9, 1993. 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. 93-2949 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-5-027]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on January 22, 1993, filed the following tariff sheet for inclusion in its FERC Gas Tariff, First Revised Volume No. 1:

Twenty-Second Revised Sheet No. 34

The Commission's June 5, 1990 Order (51 FERC ¶ 61,267) certificated the final portion of the APEC Project involving the construction and operation of CNG's North Summit Storage Pool.

CNG states that the purpose of this filing is to comply with Ordering Paragraph (M) of the Commission's Order of June 5, 1990, by changing the currently effective Rate Schedule GSS-II initial rates to reflect the actual cost of the North Summit base gas.

CNG states that copies of this filing are being served upon CNG's customers as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2945 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-69-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on January 27, 1993, submitted Sixth Revised Sheet No. 38, for filing in First Revised Volume No. 1 of CNG's FERC Gas Tariff.

CNG states that this tariff sheet is proposed to become effective on February 28, 1993. CNG requests waiver of § 154.22, of the Commission's Regulations, as well as any other waivers as may be required to permit this tariff sheet to become effective as proposed.

CNG states that the purpose of this filing is to recover seventy-five percent of $461,054 in take-or-pay costs paid to producer suppliers. CNG will absorb twenty-five percent of these take-or-pay costs, recover an equivalent twenty-five percent of such costs through a directly-billed charge for one month, and recover the remaining fifty percent of such costs from commodity throughput. CNG states that directly billed costs will be allocated to each sales customer, in accordance with provisions of CNG's Settlement in Docket No. RP88-217.

CNG states that copies of this filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before February 9, 1993. 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. 93-2946 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-3-22-000]

CNG Transmission Corp., Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on January 29, 1993, pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's Regulations, and Section 12 of the General Terms and Conditions of CNG's tariff, tendered for filing Tenth Revised Sheet No. 44, for First Revised Volume No. 1 of its FERC Gas Tariff.

CNG requests an effective date for the proposed tariff sheet of February 28, 1993.

CNG states that the purpose of this filing is to flow through to CNG's customers changes in take-or-pay costs allocated to CNG by Tennessee Gas Pipeline Company ("Tennessee"). On December 1, 1992, Tennessee filed tariff sheets in Docket Nos. RP93-37-000, RP93-37-001, and TM93-2-9-000, in part to recover fifty percent of an additional $2 million in take-or-pay settlement costs, including interest. By order issued December 31, 1992, the Commission approved Tennessee's tariff sheets, subject to refund and conditions, effective January 1, 1993.

CNG states that copies of this filing have been mailed to CNG's customers and interested state commissions. Also, copies of this filing are available during regular business hours at CNG's main offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene 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 February 9, 1993. 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. 93-2947 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TF93-4-21-000 and TQ93-3-21-001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that Columbia Gas Transmission Corporation (Columbia) on January 29, 1993, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to become effective:

February 1, 1993

Thirty-third Revised Sheet No. 26
Twenty-sixth Revised Sheet No. 26.1
Thirty-first Revised Sheet No. 26A
Twenty-sixth Revised Sheet No. 26A.1
Twenty-sixth Revised Sheet No. 26B
Twenty-first Revised Sheet No. 26B.1
Twenty-eighth Revised Sheet No. 26C
Fifteenth Revised Sheet No. 26C.1
Twenty-second Revised Sheet No. 26D
Twenty-ninth Revised Sheet No. 163

The instant filing reflects revisions to Columbia's filed-for rates for (i) an Interim Purchased Gas Adjustment (PGA) and (ii) the elimination of certain surcharges pursuant to ordering Paragraph (C) of the Commission's January 28, 1993 order in Docket Nos. TQ93-3-21-000 and TM93-8-21-000.

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, Union Center Plaza Building, 825 North Capitol Street, NW., 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 February 9, 1993. 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2950 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-3-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

February 2, 1993.

Take notice that Equitrans, Inc. (Equitrans) on January 29, 1993, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective March 1, 1993.

Second Revised Sub Forty-Second Revised Sheet No. 10
Third Revised Thirtieth Revised Sheet No. 34

Equitrans hereby submits its regularly scheduled Quarterly Purchased Gas Adjustment filing in accordance with §§ 154.308 and 154.304 of the Commission's Regulations and Section 19 of Equitrans' FERC Gas Tariff, Original Volume No. 1.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is a decrease in the demand cost of $0.0356 per dekatherm (Dth) and a decrease in the commodity cost of $0.6378 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is a decrease of $0.5993 per Dth.

Pursuant to § 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on March 1, 1993.

Equitrans states that a copy of its filing has been served upon its purchasers 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 February 9, 1993. 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. 93-2951 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that K N Energy, Inc. ("K N") on January 29, 1993 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (Section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, First Revised Volume No. 1-B to reflect changes in the Current Adjustment. The filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

	Zone 1	Zone 2
CD, SF and WPS Commodity	$(0.1751)	$(0.1751)
D1 Demand	0.0002	0.0003
D2 Demand	0.0039	0.0053
WPS Demand	0.0004	0.0006
IOR Commodity	(0.1710)	0.1695)

K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending May 31, 1993. The proposed effective date for the rate changes is March 1, 1993.

K N states that copies of the filing have been served to K N's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before February 9, 1993, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 petition 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. 93-2952 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-15-000]

Mid Louisiana Gas Co.; Notice of Proposed Change of Rates

February 2, 1993.

Take notice that Mid Louisiana Gas Company ("Mid Louisiana") on January 29, 1993, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective March 1, 1993:

Superseding

Ninety-Fifth Revised Sheet No. 3a
Ninety-Fourth Revised Sheet No. 3a

Mid Louisiana states that the purpose of the filing of Ninety-Fifth Revised Sheet No. 3a is to reflect a $0.2832 per MCF decrease in its current cost of gas.

This filing is being made in accordance with section 19 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All such petitions or protests should be filed on or before February 9, 1993. 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 Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2938 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-6-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

February 2, 1993.

Take notice that on January 29, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing Sixth Revised Eighty-Third Revised Sheet No. 4, and Sixth Revised Forty-Second Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective February 1, 1993. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Sixth Revised Eighty-Third Revised Sheet No. 4 and Sixth Revised Forty-Second Revised Sheet No. 4.1 reflect a decrease of 36.90 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed on December 30, 1992 to be effective January 1, 1993, in Docket No. TQ93-5-25-000. MRT also states that since the December 30, 1992 filing date, MRT has experienced changes 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 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 §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 9, 1993. 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. 93-2943 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-7-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

February 2, 1993.

Take notice that on January 29, 1993 Mississippi River Transmission Corporation (MRT) tendered for filing Seventh Revised Eighty-Third Revised Sheet No. 4, and Seventh Revised Forty-Second Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised

Volume No. 1 to be effective March 1, 1993.

MRT states that the instant filing reflects its quarterly purchased gas cost adjustment (PGA), submitted pursuant to § 154.308 of the Commission's Regulations and Paragraph 17.2 of MRT's FERC Gas Tariff. MRT states that it is also adjusting the level of Account No. 858 expenses included in the average commodity cost of gas pursuant to the Transportation Cost Recovery Mechanism set forth in Article V of the Stipulation and Agreement in Docket No. RP89-248 approved by Commission order dated August 7, 1991. MRT states that the impact of the instant filing on its Rate Schedule CD-1 rates is an increase of 10.89 cents per MMBtu in the commodity charge from the rate levels established in MRT's last out-of-cycle PGA effective February 1, 1993 in Docket No. TQ93-6-25-000.

MRT states that a copy of the filing is being mailed to each of MRT's jurisdictional sales customers and 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 §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 9, 1993. 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. 93-2944 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-55-000]

Questar Pipeline Co.; Notice of Rate Change

February 2, 1993.

Take notice that on January 29, 1993, Questar Pipeline Company tendered for filing and acceptance to be effective March 1, 1993, Twenty-Fourth Revised Sheet No. 12, to Original Volume No. 1 of its FERC Gas Tariff.

Questar states that the purpose of this filing is to adjust the purchased gas cost under Questar's sale-for-resale Rate Schedule CD-1 effective March 1, 1993.

Questar states that the Twenty-Fourth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.54292/Dth which is $0.18072/Dth higher than the currently effective rate of $2.36220/Dth. The demand base cost of purchased gas remained unchanged at $0.00000/Dth.

Questar states that a copy of the filing has been provided to Mountain Fuel Supply Company, the Utah Public Service Commission and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before February 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2937 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-17-000]

Tennessee Gas Pipeline Co.; Settlement Conference

February 2, 1993.

In the Commission's order issued on December 3, 1992, in the above-captioned proceeding, the Commission held that the filing raises issues for which a settlement conference is to be reconvened. All parties should come prepared to discuss settlement, and the parties should be represented by principals who have the authority to commit to a settlement. The conference to address the issues has been scheduled for Thursday, February 11, 1993, at 2 p.m., in room 2402-A, at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2941 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that Trunkline Gas Company (Trunkline) on January 29, 1993 tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Ninety-Ninth Revised Sheet No. 3-A

The proposed effective date of this revised tariff sheet is March 1, 1993.

Trunkline states that the instant filing reflects a commodity rate increase of 1.38¢ per Dt in the projected purchased gas cost component.

Trunkline states that the tariff sheet is being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to Section 18 (Purchase Gas Adjustment Clause) of the General Terms and Conditions in Trunkline's FERC Gas Tariff, Original Volume No. 1. Trunkline states that copies of this filing have been served on all jurisdictional sales customers and applicable 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 February 9, 1993. 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. 93-2954 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-56-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that Valero Interstate Transmission Company ("Vitco"), on January 29, 1993 tendered for filing the following tariff sheet as required by Orders 483 and 483-A containing changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, First Revised Volume No. 2
8th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483–A. The change in rates to Rate Schedule S–3 includes a decrease in purchased gas cost of $1.0628 per MMBtu as compared to the previously scheduled quarterly PGA filing in Docket No. TQ93–1–56.

The proposed effective date of the above filing in March 1, 1993. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by March 1, 1993.

Any person desiring to be heard or 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 February 9, 1993. 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 proceedings. 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. 93–2953 Filed 2–5–93; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4546–5]

Proposed Settlement; Asbestos NESHAP

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

Editorial Note: This document, appearing at page 59997 in the **Federal Register** of December 17, 1992, was incorrectly described in that issue's table of contents. For this reason, the document is republished in full text below. In addition, the 30-day comment period has been recalculated; see "DATES" caption.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, notice is hereby given of a proposed Settlement Agreement conditionally entered into by the United States Environmental Protection Agency ("EPA") on November 30, 1992, in litigation concerning the National Emission Standards for Hazardous Air Pollutants for Asbestos ("Asbestos NESHAP") (40 CFR 61.141–61.159). For a period of thirty days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice is authorized under section 113(g) to withdraw its consent to the Settlement Agreement if appropriate in light of the public comments.

DATES: Written comments on the Settlement Agreement must be received by March 10, 1993.

ADDRESSES: Written comments should be sent preferably in triplicate, to Michael Horowitz, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–8883. Copies of the Settlement Agreement are available from Michael Horowitz at the same address. A copy of the settlement has been lodged with the Clerk of the United States Court of Appeals for the District of Columbia Circuit.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Ripp (703) 308–8727 at the United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Stationary Source Compliance Division.

SUPPLEMENTARY INFORMATION: In *Safe Buildings Alliance* v. *U.S. Environmental Protection Agency,* No. 91–1034 (D.C. Cir.), the petitioner seeks review of EPA's November 20, 1990 Final Rule amending the national emission standard for asbestos under section 112 of the Clean Air Act, 55 FR 48406 (Nov. 20, 1990), codified at 40 CFR part 61. EPA and the petitioner have entered into a conditional Settlement Agreement that includes a Notice of Clarification that will be published in the **Federal Register** if this Settlement Agreement is made final.

Section 113(g) of the Clean Air Act (42 U.S.C. 7413(g)) requires, with exceptions not pertinent here, that EPA publish notice of settlement agreements in the **Federal Register** and provide a reasonable opportunity for public comment. EPA or the Department of Justice may withhold consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate or inconsistent with the requirements of the Clean Air Act.

Dated: December 3, 1992.
Raymond B. Ludwiszewski,
Acting General Counsel.
[FR Doc. 92–30654 Filed 12–16–92; 8:45 am]
BILLING CODE 1505–01–M

[FRL–4591–9]

Science Advisory Board Ecological Processes and Effects Committee Biotechnology Research Review Subcommittee; Open Meeting

Pursuant to the Federal Advisory Committees Act, Public Law 92–463, notice is hereby given that the Biotechnology Research Review Subcommittee (the Subcommittee) of the Ecological Processes and Effects Committee of the Science Advisory Board will meet on February 18–19, 1993, at the EPA Environmental Research Laboratory, 1 Sabine Drive, Gulf Breeze, FL 32561–5299. The meeting is open to the public, and will begin on both days at 8:30 a.m. and end no later than 5 p.m. on February 19. Seating at the meeting will be on a first come basis.

Background

The Subcommittee will meet to review the research program for Environmental Releases of Biotechnology Products, including the on-going research program and a revised Research Issue Plan. As part of the Charge to the Subcommittee, the Agency has requested that the SAB answer the following questions:

1. Has the scientific productivity been consistent with available resources and responsive to the mission of the program?
2. Has the extramural portion of the program been used effectively to fill knowledge gaps and supplement in-house expertise?
3. Has there been sufficient interaction with other research programs (nationally and/or internationally) to ensure top level scientific exchange and minimize redundant efforts?
4. Have the research results demonstrated an effective level of project integration?
5. Considering current approaches to assessing environmental releases of biotechnology products, vis a vis the burgeoning industry, is the research plan consistent with the state of the science, and does it reflect appropriate balance in research on effects, detection, gene transfer, and survival?
6. Does the proposed research plan identify appropriate knowledge gaps and priority research needs?

7. Is the proposed research on genetically engineered plants with pesticidal activity appropriately focused? What other research in this area should be considered?

Availability of Documents and Information

Single copies of background documents for this review are available from Dr. Robert Menzer, U.S. EPA, Environmental Research Laboratory, 1 Sabine Drive, Gulf Breeze, FL 32561-5299, telephone (904) 934-9208. For additional information concerning this meeting or to obtain a draft agenda, please contact Ms. Stephanie Sanzone, Designated Federal Official, or Mrs. Marcia Jolly, Staff Secretary, at (202) 260-6552, Ecological Processes and Effects Committee, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Anyone wishing to make a presentation at the meeting must notify Mrs. Jolly and forward twenty-five copies of a written statement to her no later than February 10, 1993. Oral comments to the Subcommittee will be limited to five minutes per individual, and should not be repetitive of previously submitted written statements.

Dated: January 21, 1993.

Samuel R. Rondberg,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93-2962 Filed 2-5-93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Revision of a currently approved collection.

Title: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks).

Form Number: FFIEC 031, 032, 033, 034.

OMB Number: 3064-0052.

Expiration Date of OMB Clearance: December 31, 1993.

Respondents: Insured state nonmember commercial and savings banks.

Frequency of Response: Quarterly.

Number of Respondents: 7,495.

Number of Responses per Respondent: 4.

Total Annual Responses: 29,980.

Average Number of Hours per Response: 24.6.

Total Annual Burden Hours: 737,424.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project 3064-0052, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before March 10, 1993.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: These revisions to the Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks) are summarized as follows.

(1) New items would be added to Schedule RC-N, "Past Due and Nonaccrual Loans, Leases, and Other Assets," to collect data on loans and leases that are past due 30 through 89 days, past due 90 days or more, or are in nonaccrual status but are wholly or partially guaranteed by the U.S. Government. The items in which banks currently report the totals for their past due and nonaccrual assets would be deleted.

(2) A memorandum item would be added to schedule RC-F, "Other Assets," for "Deferred tax assets disallowed for regulatory capital purposes."

(3) An item would be added to schedule RC-M, "Memoranda," for "Intangible assets that have been grandfathered for regulatory capital purposes" to replace two items on intangibles that have been applicable only to national banks.

Dated: February 2, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-2847 Filed 2-5-93; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Guidance Memorandum RG-2, Guidelines for Regional Implementation of FEMA's Rule, 44 CFR Part 352; Availability

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability.

SUMMARY: The Federal Emergency Management Agency (FEMA) draft Guidance Memorandum (GM) RG-2 is available to all interested parties for review and comment. This document provides FEMA policies and procedures for FEMA Regional Office implementation of Executive Order 12657 to ensure that offsite radiological emergency planning and preparedness are in place to meet the Nuclear Regulatory Commission's (NRC) licensing requirements for commercial nuclear power plants where State and local governments decline or fail to participate adequately in such planning and preparedness.

DATES: Comments should be sent to FEMA before May 14, 1993.

ADDRESSES: Comments on these documents should be addressed to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646-4536. Please refer to "Guidance Memorandum RG-2" in your response.

FOR FURTHER INFORMATION CONTACT: William F. McNutt, Office of Technological Hazards, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-2857.

SUPPLEMENTARY INFORMATION: The FEMA rule that provides policies and procedures for implementing Executive Order 12657 was published August 2, 1989, 54 FR 31925, and is codified at 44 CFR part 352. Guidance for FEMA Regional Office implementation of this rule is necessary to comply with this Executive Order and to carry out FEMA's responsibilities under 44 CFR part 352. Copies are being distributed to all FEMA Regions, the NRC's commercial nuclear power plant licensees, and other REP Program

constituents for their review and comment.

As mandated by this Executive Order, 44 CFR part 352 sets forth major new responsibilities for FEMA Headquarters and Regions when an NRC licensee or applicant provides written certification of nonparticipation or inadequate participation by State and local governments in offsite planning and preparedness. This draft GM RG–2 outlines the FEMA Regional Office responsibilities under the new rule and establishes policies and procedures to be followed when consulting, coordinating and interacting with FEMA Headquarters, other Federal agencies, NRC licensees or applicants and State and local government regarding situations where the provisions of 44 CFR part 352 need to be implemented.

Policies and procedures are described in the GM for the following functions: (1) Processing licensee letters of certification and requests for Federal assistance, (2) providing recommended determinations to FEMA Headquarters, (3) coordinating the provisions of Federal technical assistance to licensees and participating State and local governments, (4) evaluating licensee offsite radiological emergency planning and procedures, and (5) making arrangements for the provision of Federal compensatory facilities and resources.

Comments received by FEMA on this document will be considered and incorporated, as appropriate, into the development of the final published GM RG–2.

Dated: February 1, 1993.

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–2932 Filed 2–5–93; 8:45 am]

BILLING CODE 6718–20–M

FEDERAL MARITIME COMMISSION

Asia North America Eastbound Rate Agreement et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. 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.: 202–010776–076.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.,
Hapag-Lloyd Aktiengesellschaft,
Kawasaki Kisen Kaisha, Ltd.,
A.P. Moller-Maersk Line,
Mitsui O.S.K. Lines, Ltd.,
Neptune Orient Lines, Ltd.,
Nippon Yusen Kaisha Line,
Orient Overseas Container Line, Ltd.,
Sea-Land Service, Inc.

Synopsis: The proposed amendment deletes Hapag-Lloyd Aktiengesellschaft as a party to the subcontinent trade section of the Agreement. It also modifies the provisions governing payment of fees and expenses as specified in Appendices B and D.

Agreement No.: 202–010776–077.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.,
Hapag-Lloyd Aktiengesellschaft,
Kawasaki Kisen Kaisha, Ltd.,
A.P. Moller-Maersk Line,
Mitsui O.S.K. Lines, Ltd.,
Neptune Orient Lines, Ltd.,
Nippon Yusen Kaisha Line,
Orient Overseas Container Line, Ltd.,
Sea-Land Service, Inc.

Synopsis: The proposed amendment revises the rules governing the participation of new members in existing Agreement service contracts.

Agreement No.: 224–004070–007.

Title: San Francisco/Stevedoring Services of America Terminal Agreement.

Parties:

San Francisco Port Commission,
Stevedoring Services of America.

Synopsis: The amendment extends the term of the Agreement until April 30, 1993.

By Order of the Federal Maritime Commission.

Dated: February 2, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–2831 Filed 2–5–93; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; Alabama State Docks Dept. and Mobile Independent Stevedoring Inc., et al.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200731.

Title: Alabama State Docks Department and Mobile Independent Stevedoring, Inc.

Parties:

Alabama State Docks Department
Mobile Independent Stevedoring, Inc. ("Mobile")

Agent: E.G. Browning, Jr., General Manager, Alabama State Docks Department, P.O. Box 1588, Mobile, Alabama 36633.

Synopsis: The Agreement provides for Mobile to perform cargo and freight handling services at the Port. The term is for two five year segments.

Agreement No.: 224–200732.

Title: Alabama State Docks Department and Murray Stevedoring Company, Inc.

Parties:

Alabama State Docks Department
Murray Stevedoring Company, Inc. ("Murray")

Agent: E.G. Browning, Jr., General Manager, Alabama State Docks Department, P.O. Box 1588, Mobile, Alabama 36633.

Synopsis: The Agreement provides for Murray to perform cargo and freight handling services at the Port. The term is for two five year segments.

Agreement Nos.: (1) 224–200729, (2) 224–200730, (3) 224–200733, (4) 224–200734, (5) 224–200735, (6) 224–200736, (7) 224–200737.

Title:

(1) Alabama State Docks Department/ Cooper T. Smith Terminal

Agreement
(2) Alabama State Docks Department/ Golden Stevedoring Terminal Agreement
(3) Alabama State Docks Department/ Premier Stevedoring Terminal Agreement
(4) Alabama State Docks Department/ Ryan-Walsh Terminal Agreement
(5) Alabama State Docks Department/ Southern Cargo Handlers Terminal Agreement
(6) Alabama State Docks Department/ Southern International Terminal Agreement
(7) Alabama State Docks Department/ Strachan Shipping Terminal Agreement

Parties:

Alabama State Docks Department ("Department") and
(1) Cooper T. Smith Co., Inc.
(2) Golden Stevedoring Company, Inc.
(3) Premier Stevedoring, Inc.
(4) Ryan-Walsh Stevedoring, Inc.
(5) Southern Cargo Handlers, Inc.
(6) The Southern International Service Co., Inc. (SISCO)
(7) Strachan Shipping Company

Agent: E.G. Browning, Jr., General Manager, General Cargo Marketing and Operations, Alabama State Docks Department, P.O. Box 1588, Mobile, Alabama 36633.

Synopsis: The Agreements permit the individual parties to perform cargo and freight handling service at the Department's facilities at the Port of Mobile.

Dated: February 2, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93-2864 Filed 2-5-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

CommFirst Bancorporation, 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 March 5, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. CommFirst Bancorporation, Inc., South Sioux City, Nebraska; to become a bank holding company by acquiring Y.B. Corporation, South Sioux City, Nebraska, and thereby indirectly acquire Nebraska State Bank, South Sioux City, Nebraska, and to acquire Buya Corporation, South Sioux City, Nebraska, and thereby indirectly acquire Wakefield National Bank, Wakefield, Nebraska.

2. CRACO, Inc., Vinita, Oklahoma; to become a bank holding company by acquiring First National Bank and Trust Company, Vinita, Oklahoma.

3. Dickinson Financial Corporation, Kansas City, Missouri; to merge with Army National Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire Army National Bank, Ft. Leavenworth, Kansas.

4. FNBR Holding Corp., Meeker, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of the Rockies, Meeker, Colorado.

Board of Governors of the Federal Reserve System, February 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-2893 Filed 2-5-93; 8:45 am]

BILLING CODE 6210-01-F

Crestar Financial Corporation; 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 March 5, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Crestar Financial Corporation, Richmond, Virginia; to acquire CFS Financial Corporation, Fairfax, Virginia and thereby engage in operating a thrift institution pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Virginia.

Board of Governors of the Federal Reserve System, February 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-2894 Filed 2-5-93; 8:45 am]

BILLING CODE 6210-01-F

Thomas D. Flanagan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 1, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Thomas D. Flanagan, Barrington, Illinois; to acquire 12.48 percent of the voting shares of Premier Financial Services, Inc., Freeport, Illinois, and thereby indirectly acquire First Bank North, Freeport, Illinois, and First Bank South, Dixon, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Doyl Earl Brown, Wynne, Arkansas; to acquire 15.03 percent of the voting shares of First National Corporation of Wynne, Wynne, Arkansas, as the result of a stock redemption, and thereby indirectly acquire First National Bank of Wynne, Wynne, Arkansas.

Board of Governors of the Federal Reserve System, February 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-2895 Filed 2-5-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Health; Parallel Track Policy

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, the authority vested in the Secretary of Health and Human Services under title 45 CFR, part 46, Protection of Human Subjects, § 46.101(i) concerning waiver of part 46 as amended. This delegation is limited to research studies which are being considered in connection with the Public Health Services policy for an expanded availability of investigational new drugs through a parallel track mechanism.

This delegation is effective immediately.

Dated: January 15, 1993.

Louis W. Sullivan,

Secretary.

[FR Doc. 93-2845 Filed 2-5-93; 8:45 am]

BILLING CODE 4160-17-M

Agency for Health Care Policy and Research

Public Meeting on the Clinical Practice Guideline for Screening for Alzheimer's and Related Dementias

The Agency for Health Care Policy and Research (AHCPR) announces that a public meeting will be held to receive comments and information pertaining to the development of the clinical practice guideline for Screening for Alzheimer's and Related Dementias. The guideline is being developed by a private-sector panel of health care experts and consumers. The panel is supported by AHCPR.

A Notice announcing that AHCPR was arranging for the development of this clinical guideline was published in the **Federal Register** on November 26, 1991 (56 FR 59950). That notice invited nominations for experts and consumers to serve on the panel that is developing the guideline.

A public meeting to address the guideline for Screening for Alzheimer's and Related Dementias and to provide an opportunity for interested parties to contribute relevant information and comments will be held as follows: Meeting: Screening for Alzheimer's and Related Dementias, Monday, April 12, 1993, From 1 p.m. to 5 p.m., Hyatt Regency Washington, 400 New Jersey Avenue, NW., Washington, DC 20001, Meeting Room—Capitol Room, Phone: 202-737-1234.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) added a new Title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services (See 42 U.S.C. 299-299c-6 and 1320b-12). The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102-410) enacted on October 13, 1992, amended certain provisions of the Act.

In keeping with its legislative mandate, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, other health care practitioners, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act (42 U.S.C. 299b-1(b)), as amended by Public Law 102-410, requires that the guidelines:

1. Be based on the best available research and professional judgment;

2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;

3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing the quality and appropriateness of medical care;

4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and

5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 914 of the Act (42 U.S.C. 299b-3(a)), as amended by Public Law 102-410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;

2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;

3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments;

4. Reduce clinically significant variations in the outcomes of health care services and procedures; and

5. Affect costs associated with the prevention, diagnosis, treatment, or management of the condition(s).

Also, in accordance with Title IX of the PHS Act and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for the development of guidelines.

Arrangements for the April 12, 1993 Public Meeting on Clinical Practice Guidelines for Screening for Alzheimer's and Related Dementias

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. Individuals and representatives who would like to attend must register with Demie Lyons, N.P., Mikalix and Company, the AHCPR contractor providing support to the panel, at the address set out below by March 12, 1993, and indicate whether they plan to make an oral statement. A copy of the oral statement, comments, and information should be submitted to Ms. Lyons by March 12, 1993. If more requests to make oral statements are received than can be accommodated between 1 p.m. and 5 p.m. on April 12, 1993, the chairpersons will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, product manufacturers, and pharmaceutical manufacturers is presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered in developing the guidelines.

If sign language interpretation, or other reasonable accommodations for disability, is needed please contact Ms. Lyons at the address below by March 12, 1993.

Registration should be made with, and written materials submitted to, Ms. Lyons, Mikalix and Company, at the following address: Mikalix and Company, Attn: Demie Lyons, N.P., 404 Wyman Street, Suite 375, Waltham, Massachusetts 02154–1210, Phone: 617–290–0090, Fax: 617–290–0180.

Dated: January 25, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93–2849 Filed 2–5–93; 8:45 am]

BILLING CODE 4160-90-M

Public Meeting on the Clinical Practice Guideline for Diagnosis and Treatment of Chest Pain Due to Unstable Angina With The National Heart, Lung, and Blood Institute

The Agency for Health Care Policy and Research (AHCPR) and the National Heart, Lung, and Blood Institute (NHLBI) announce that a public meeting will be held to receive comments and information pertaining to the development of the clinical practice guideline for diagnosis and treatment of chest pain due to unstable angina. The guideline is being developed by a non-profit contractor of AHCPR with the assistance of a panel of experts and health care consumers.

A Notice announcing that AHCPR and NHLBI were interested in awarding three contracts for development of clinical practice guidelines on diagnosis and treatment of chest pain due to unstable angina, cardiac rehabilitation, diagnosis and management of cardiac dysrhythmias was published in the **Federal Register** on May 18, 1992 (57 FR 21118). That notice invited nominations, on behalf of the contractors, for panels of experts and consumers to assist in the development of the guidelines. AHCPR has awarded two contracts, unstable angina and cardiac rehabilitation.

A public meeting to address the guideline for the diagnosis and treatment of unstable angina and to provide an opportunity for interested parties to contribute relevant information and comments will be held as follows: Thursday, April 8, 1993, From: 4 p.m. to 10 p.m., American College of Cardiology, Heart House, 9111 Old Georgetown Road, Bethesda, MD 20814, Phone No.: 301–987–5400.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (Sec. 42 U.S.C. 299–299c–6 and 1320b–12.) The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410) enacted on October 13, 1992, amended certain provisions of the Act.

In keeping with its legislative mandates, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, other health care practitioners, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act (42 U.S.C. 299b–1(b)), as amended by Public Law 102–410, requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;
3. Be presented in treatment—specific or condition—specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care.
4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 914 of the Act (42 U.S.C. 299b–3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

Arrangements for the April 8, 1993 Public Meeting on Diagnosis and Treatment of Chest Pain Due to Unstable Angina

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. Individuals and representatives who would like to attend must register with the Duke University Medical Center, the AHCPR non-profit contractor developing the guideline, at the address set out below by March 1, 1993, and indicate whether they plan to make an oral statement. A copy of the oral statement, comments, and information should be submitted to Duke University Medical Center by March 1, 1993. If more requests to make oral statements

are received than can be accommodated between 4 p.m. and 10 p.m. on April 8, 1993, the chairperson will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, product manufacturers, and pharmaceutical manufacturers is presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered in developing the guidelines.

If sign language interpretation or other reasonable accommodations for disability is needed, please contact Duke University Medical Center by March 1, 1993, at the address below.

Registration should be made with and written materials submitted to the following address: Duke University Medical Center, Attn: Nancy Archibald, P.O. Box 2986, Durham, North Carolina 27710; Phone No.: 919-684-6077; Fax No.: 919-684-5700.

Dated: January 22, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93-2848 Filed 2-5-93; 8:45 am]

BILLING CODE 4160-90-M

Public Meeting on the Clinical Practice Guideline for Quality Determinants of Mammography

The Agency for Health Care Policy and Research (AHCPR) announces that a public meeting will be held to receive comments and information pertaining to the development of the clinical practice guideline for quality determinants of mammography. The guideline is being developed by a private-sector panel of health care experts and consumers.

A Notice announcing that AHCPR was arranging for the development of this clinical guideline was published in the **Federal Register** June 4, 1991 (56 FR 25430). That notice invited nominations for experts and consumers to serve on the panel that is developing the guideline.

A public meeting to address the guideline for quality determinants of mammography and to provide an opportunity for interested parties to contribute relevant information and comments will be held as follows: Meeting: Quality Determinants of Mammography, Monday, March 8, 1993, From 9 a.m. to Noon, Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814, Phone: 301-897-9400.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) added a new Title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services (See 42 U.S.C. 299-299c-6 and 1320b-12). The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102-410) enacted on October 13, 1992, amended certain provisions of the Act.

In keeping with its legislative mandate, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, other health care practitioners, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act (42 U.S.C. 299b-1(b)), as amended by Public Law 102-410, requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;
3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing the quality and appropriateness of medical care;
4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 914 of the Act (42 U.S.C. 299b-3(a)), as amended by Public Law 102-410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with Title IX of the PHS Act and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for the development of guidelines.

Arrangements for the March 8, 1993 Public Meeting on Clinical Practice Guidelines for the Development of Quality Determinants of Mammography

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. Individuals and representatives who would like to attend must register with Ms. Mary Madison, Mikalix and Company, the AHCPR contractor providing support to the panel, at the address set out below by February 24, 1993, and indicate whether they plan to make an oral statement. A copy of the oral statement, comments, and information should be submitted to Ms. Mary Madison, Mikalix and Company, by February 24, 1993. If more requests to make oral statements are received than can be accommodated between 9 a.m. and Noon on March 8, 1993, the chairpersons will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, product manufacturers, and pharmaceutical manufacturers is presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered in developing the guidelines.

If sign language interpretation, or other reasonable accommodations for disability, is needed, please contact Mikalix and Company at the address below by February 24, 1993.

Registration should be made with, and written materials submitted to: Mikalix and Company, Attention: Ms. Mary Madison, 404 Wyman Street, Suite 375, Waltham, Massachusetts 02154-1210, Phone: 617-290-0090, Fax: 617-290-0180.

Dated: January 25, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93-2850 Filed 2-5-93; 8:45 am]

BILLING CODE 4160-90-M

Agency for Toxic Substances and Disease Registry

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HT (Agency for Toxic Substances and Disease Registry) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (50 FR 25129–25130, dated June 17, 1985, as amended most recently at 56 FR 48805, dated September 26, 1991) is amended to reflect the order of succession.

After *Section HT–B, Organization and Functions,* insert the following:

Section HT–C, Order of Succession. During the absence or disability of the Administrator, Agency for toxic Substances and Disease Registry, or in the event of a vacancy in that office, the first official listed below who is available shall act as Administrator, except that during a planned period of absence, the Administrator may specify a different order of succession: (1) Deputy Administrator, (2) Assistant Administrator, (3) Deputy Assistant Administrator.

Dated: January 15, 1993.

Louis W. Sullivan,

Secretary.

[FR Doc. 93–2846 Filed 2–5–93; 8:45 am]

BILLING CODE 4160–70–M

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 58 FR 3963, dated January 12, 1993) is amended to reflect the following organizational changes within the International Health Program Office: (1) Establishment of the Bilateral Health Activity, the International Emergency and Refugee Activity, and the International Visitors Activity; and (2) abolishment of the Division of International Liaison.

Section HC–B, Organization and Functions, is hereby amended as follows:

1. After the functional statement for the *Office of Administrative Services (HCG14), Office of the Director (HCG1), International Health Program Office (HCG),* insert the following:

Bilateral Health Activity (HCG15). (1) Provides assistance to Director, International Health Program Office (IHPO), in his role as the Associate Director for International Health, Centers for Disease Control and Prevention (CDC), in the development and official clearance of CDC bilateral health agreements; (2) provides assistance to the other component of CDC in the development and monitoring of bilateral health activities, including projects conducted under the Special Foreign Currency Program (SFCP/PL–480); (3) coordinates the development, processing and official clearance of CDC cable notifications; (4) provides visa and passport services to CDC international travelers; (5) coordinates CDC response to short-term consultancy requests received by the PHS Office of International Health from international organizations; (6) develops consolidated briefing materials on CDC international health activities; (7) coordinates and monitors the utilization of the CDC portion of the PHS Office of International Health Contract for Logistical Support Services.

International Emergency and Refugee Activity (HCG16). (1) Provides staff support to IHPO, and to the Associate Director for International Health, CDC, in directing and coordinating international activities throughout CDC; (2) maintains liaison with the PHS Office of International Health and with other multilateral, governmental, and non-governmental organizations concerned with international health; (3) provides liaison and coordination of CDC involvement with national and international agencies in response to request for assistance in emergency and non-emergency situations outside the United States; (4) serves as the focus for the WHO–CDC Collaborating Center for Disaster Preparedness and Response; (5) coordinates CDC refugee assistance activities and serves as the focal point between CDC and the United Nations High Commissioner for Refugees and the Department of State's Bureau of Refugee Programs in collaboration with the Division of Technical Support; (6) coordinates responses to requests from WHO and its regional offices for assistance in dealing with HIV/AIDS and other short-term technical assistance requests of a non-emergency nature; (7) provides coordination and implementation of CDC staff international capacity development initiatives.

International Visitors Activity (HCG17). (1) Receives, orients, and coordinates schedules and housing of international visitors to the CDC; (2) coordinates within CDC and with external organizations long- and short-term training of visitors; (3) determines requirements for and monitors health insurance for guest researchers; (4) produces reports for the Office of International Health and CDC on international visitors; (5) maintains archives and disseminates foreign trip reports filed by CDC staff; (6) collaborates with course provider in the organization and management of the international track of the EIS course and on other training activities for health professionals from developing countries.

2. Delete in its entirety the functional statement for the *Division of International Liaison (HCG2), International Health Program Office (HCG).*

Dated: January 27, 1993.

William L. Roper,

Director, Centers for Disease Control and Prevention.

[FR Doc. 93–2882 Filed 2–5–93; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Committee on Rural Health

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Dena S. Puskin, Sc.D. Acting Executive Secretary, National Advisory Committee on Rural Health, room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0836.

Dated: February 2, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–2852 Filed 2–5–93; 8:45 am]

BILLING CODE 4160–15–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services, Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS)

ACTION: Notice

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Division of Workplace Programs, room 9-A-54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratories, 427 Fifth Avenue, N.W., P.O. Box 770, Attalla, AL 35954-0770, 205-538-0012/800-247-3893

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615-331-5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800-541-4931/205-263-5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817-282-2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703-802-6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, suite 250, Las Vegas, NV 89119-5412, 702-733-7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787

Baptist Medical Center—Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-227-2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414-355-4444/800-877-7016

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617-547-8900

California Toxicology Services, 1925 East Dakota Avenue, Suite 206, Fresno, CA 93726, 209-221-5655/800-448-7600

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310-215-6020

Clinical Pathology Facility, Inc. 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917

CompuChem Laboratories, Inc., A subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263/800-833-3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800-876-3652/417-836-3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137-3054, 800-338-0166 (outside OH)/800-362-8913 (inside OH) (name changed: formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800-638-1100 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 8300 Esters Blvd., suite 900, Irving, TX 75063, 214-929-0535

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511-2597, 804-444-8089 ext. 317

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904-787-9006

Drug Labs of Texas, 15201 I-10 East, suite 125, Channelview, TX 77530, 713-457-3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310

Eagle Forensic Laboratory, Inc., 950 North Federal Highway, suite 308, Pompano Beach, FL 33062, 305-946-4324

Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516-625-9800

ElSohly Laboratories, Inc., 1215-1/2 Jackson Ave., Oxford, MS 38655, 601-236-2609

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800-627-8200 (name change: formerly Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-6267

Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800-725-3784/915-687-6877

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800-328-4142 (inside MI)/800-225-9414 (outside MI)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713-793-6080

IHC Laboratory Services Forensic Toxicology, 930 North 500 West, Suite E, Provo, UT 84604, 800-967-9766

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, Ohio 45229, 513-569-2051

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715-389-3734/800-222-5835

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507-284-3631

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412-931-7200

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901-795-1515

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 9176 Independence Avenue, Chatsworth, CA 91311, 818-718-0115/800-331-8670 (outside CA)/800-464-7081 (inside CA) (name changed: formerly Laboratory Specialists, Inc.; Abused Drug Laboratories)

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc. 2356 North

Lincoln Avenue, Chicago, IL 60614, 312-880-6900 (name changed: formerly Bio-Analytical Technologies)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800-832-3244/612-636-7466
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317-929-3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800-752-1835/309-671-5199
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708-595-3888
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201-393-5000
MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800-492-0800/818-343-8191
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410-536-1485 (name changed: formerly Maryland Medical Laboratory, Inc.)
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800-749-3784 (name changed: formerly Med Arts Lab)
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103-6710, 919-760-4620/800-334-8627 (outside NC)/800-642-0894 (inside NC)
National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016-2643, 908-272-2511
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A-15, Nashville, TN 37217, 615-360-3992/800-800-4522
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703-742-3100/800-572-3734 (inside VA)/800-336-0391 (outside VA)
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800-251-9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805-322-4250
Nichols Institute Substance Abuse Testing (NISAT), 7470-A Mission Valley Road, San Diego, CA 92108-4406, 800-446-4728/619-686-3200 (name changed: formerly Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361
Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504-465-0751
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440-0972, 503-687-2134
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708-480-4680
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509-926-2400
PDLA, Inc. (Precision), 5 Industrial Park Drive, Oxford, MS 38655, 601-236-5600/800-237-7352
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908-769-8500/800-237-7352
PharmChem Laboratories, Inc., 1505-A O'Brien Drive, Menlo Park, CA 94025, 415-328-6200/800-446-5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817-595-0294 (Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory Toxicology Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913-338-4070
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619-279-2600/800-882-7272
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 512-493-3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburg, MS 39402, 601-264-3856/800-844-8378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206-882-3400
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803-233-5639
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205-581-4170
Roche Biomedical Laboratories, 1957 Lakeside Parkway, suite 542, Tucker, GA 30084, 404-939-4811
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601-342-1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800-437-4986
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800-749-3788
S.E.D. Medical Laboratories, 500 Walter NE, suite 500, Albuquerque, NM 87102, 505-848-8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800-648-5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818-376-2520
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404-934-9205 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708-885-2010 (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314-567-3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800-523-5447 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-638-1301 (name changed: formerly SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219-234-4176
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405-272-7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314-577-8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314-882-1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305-593-2260

The following laboratory has voluntarily withdrawn from the National Laboratory Certification Program, effective February 1, 1993:

Bellin Hospital—Toxicology Laboratory, 215 N. Webster Ave., Green Bay, WI 54301, 414-433-7485

Michele W. Applegate,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93-2991 Filed 2-5-93; 8:45 am]

BILLING CODE 4160-20-P

DEPARTMENT OF THE INTERIOR

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, Public Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 101-512, the Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES: February 23-25, 1993, 8 a.m. to 5:30 p.m.; the Sheraton Premiere at Tysons Corner, 8661 Leesburg Pike, Vienna, Virginia. The meeting of the Task Force is open to the public.

FOR FURTHER INFORMATION CONTACT: Veronica L. Murdock, Designated Federal Officer, Office of the Assistant Secretary—Indian Affairs; MS 4140 MIB; 1849 C Street NW., Washington, DC 20240; Telephone number (202) 208-4173.

SUPPLEMENTARY INFORMATION: Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization in joint sponsorship with the National Congress of American Indians, the Tribal Forum, the National Center for Policy Development, the Intertribal Monitoring Association on Trust Funds, the Native American Rights Fund, and the Intertribal Agriculture Council will conduct a National Indian Policy Forum at this meeting. In addition, the Task Force will elect its tribal Co-Chairman and will receive reports from its work groups covering their activities since the last general meeting. Public attendance and participation in this meeting are

encouraged, and the public will be asked to participate with the sponsoring organizations in developing national Indian policy recommendations for communication to the Secretary of the Interior.

Dated: February 2, 1993.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93-2997 Filed 2-5-93; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AK-050-4710-01]

Alaska, Paxson Campground Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of campground fee.

SUMMARY: Notice is hereby given that campground fees will be charged at Paxson Campground, Mile 175 Richardson Highway in the Glennallen District, Alaska. This is in accordance with 36 CFR 71.3.

DATES: This action is effective as of June 1, 1993.

ADDRESSES: For further information contact Gene R. Keith, Bureau of Land Management (BLM), Glennallen District Office, Mile 186.5 Glenn Highway, PO Box 147, Glennallen, Alaska 99588; Telephone (907) 822-3217.

FOR FURTHER INFORMATION CONTACT: Larry Kajdan, (907) 822-3217.

SUPPLEMENTARY INFORMATION: Paxson Campground has been upgraded and meets the fee requirements established under 36 CFR 71.3. A daily fee will be charged for each campsite occupied. The fee amount will vary depending on services provided and will be posted at the fee collection station. These fees are established to maintain public lands administered by the Bureau of Land Management in Alaska.

Gene R. Keith,

District Manager.

[FR Doc. 93-2884 Filed 2-5-93; 8:45 am]

BILLING CODE 4310-JA-M

[MT-930-4410-02]

Availability of the Draft Big Dry Resource Management Plan/ Environmental Impact Statement; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with section 202 of the Federal Land Policy and Management Act of 1976 and section 202(c) of the National Environmental Policy Act of 1969, the draft resource management plan/environmental impact statement has been prepared for the Big Dry Resource Area planning area. The resource management plan/ environmental impact statement describes and analyzes future options for approximately 1.7 million surface acres and 7.6 million acres of federal minerals managed by the Bureau of Land Management. These acres are located in all or portions of Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Prairie, Richland, Roosevelt, Rosebud, Sheridan, and Wibaux Counties. The resource management plan/environmental impact statement provides a comprehensive plan for managing federal resources administered by the Bureau of Land Management.

PUBLIC PARTICIPATION: Reading copies will be available at each public library located in the above counties. Copies will be available from the Miles City District Office, P.O. Box 940, Miles City, Montana 59301, phone 406-232-4331, and the Big Dry Resource Area Office, Miles City Plaza, Miles City, Montana 59301, phone 406-232-7000. Public reading copies will be available for review at the following Bureau of Land Management locations:

Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets NW., Washington, DC 20240.

External Affairs Office, Montana State Office, P.O. Box 36800, 222 North 32nd Street, Billings, MT 59107.

Written comments on the draft resource management plan/ environmental impact statement will be accepted until (90 days following the date the Environmental Protection Agency publishes the Notice of Filing of the Draft in the **Federal Register**). Comments can be mailed or submitted at nine public meetings to be held:

Date	Location	Time
May 3, 1993	Wolf Point, MT	7 p.m.
May 4, 1993	Sidney, MT	7 p.m.
May 5, 1993	Jordan, MT	7 p.m.
May 6, 1993	Circle, MT	7 p.m.
May 10, 1993	Glendive, MT	7 p.m.
May 11, 1993	Terry, MT	7 p.m.
May 12, 1993	Baker, MT	7 p.m.
May 13, 1993	Forsyth, MT	7 p.m.
May 17, 1993	Miles City, MT	7 p.m.

ADDRESSES: Written comments on the document should be addressed to: Chuck Frost, District Manager, Bureau of Land Management, Miles City District Office, P.O. Box 940, Miles City, Montana 59301.

FOR FURTHER INFORMATION CONTACT: Al Kutt, Resource Management Plan/ Environmental Impact Statement Team Lead, Big Dry Resource Area Office, Miles City Plaza, Miles City, Montana 59301, 406-232-7000.

SUPPLEMENTARY INFORMATION: The draft resource management plan/ environmental impact statement analyzes four alternatives to resolve two issues: Special management designations and resource accessibility and availability. Each alternative represents a complete management plan. The alternatives can be summarized as: (1) Current management or no action; (2) resource protection; (3) resource production; and (4) the preferred alternative, which is a combination of the previous three.

The resource management plan/ environmental impact statement evaluates 17 areas of critical environmental concern nominations. Ten areas would be designated as areas of critical environmental concern. Four areas met the relevance and importance criteria, but would not be designated as areas of critical environmental concern. Three areas did not meet the relevance and/or importance criteria.

The Big Sheep Mountain cultural site (360 public surface acres) in Prairie County would be designated an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The Hoe cultural site (144 public surface acres) in Prairie County would be designated as an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be

allowed, and rights-of-way construction would be avoided.

The Jordan Bison Kill cultural site (160 public surface acres) in Garfield County would be designated as an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting this area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The Powder River Depot cultural site (1,386 public surface acres) in Prairie County would be designated as an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting their area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a non-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed on 1,215 acres, and rights-of-way construction would be avoided. There would be a 171-acre special recreation management area within this area of critical environmental concern which would be managed for recreation. Livestock grazing would be excluded from the recreation area

The Seline cultural site (80 public surface acres) in Dawson County would be designated as an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting this area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The Bug Creek paleontological site (3,840 public surface acres) in McCone County would be designated as an area of critical environmental concern. This area would be managed to enhance and protect paleontological resources. Management actions affecting this area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals would not be available for leasing, coal would be available for leasing, oil and gas leasing would be allowed subject to lease terms, geophysical exploration would be permitted, livestock grazing would be allowed, and rights-of-way construction would be allowed.

The Hell Creek paleontological site (19,169 public surface acres) in Garfield County would be designated as an area of critical envornmental concern. This area would be managed to enhance and protect paleontological resources. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, non-energy leasable minerals would not be available for leasing, coal would be available for leasing, oil and gas leasing would be allowed subject to lease terms, geophysical exploration would be permitted, livestock grazing would be allowed, and right-of-way construction would be allowed.

The Sand Arroyo paleontological site (9,056 public surface acres) in McCone County would be designated as an area of critical environmental concern. This area would be managed to enhance and protect paleontological resources. Management actions affecting this area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable material would not be available for leasing, coal would be available for leasing, oil and gas leasing would be allowed subject to lease terms, geophysical exploration would be permitted, livestock grazing would be allowed, and rights-of-way construction would be allowed.

The black-footed ferret area (1,151 public surface acres) in Custer and Prairie Counties would be designated as an area of critical environmental concern. This area would be managed to make habitat available for the reintroduction of the black-footed ferret. Management actions affecting this area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be available for entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a controlled surface use stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The piping plover site (16 public surface acres) in Sheridan County would be designated as an area of critical environmental concern. This area would be managed to enhance and protect piping plover habitat. Management actions affecting this area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals would not be available for leasing, the site is unsuitable for coal development, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would not be allowed, and rights-of-way construction would be avoided.

The National Park Service has designated the Yellowstone and Missouri Rivers as part of the Lewis and Clark National Historic Trail. The public lands along these rivers were not designated as areas of critical environmental concern because present management adequately protects them, and they are not contiguous.

The Ash Creek Divide paleontological site contains paleontological resources in the Hell Creek formation. The objectives for this site can be met without special management attention.

Bald eagle habitat meets the relevance and importance criteria, but would not be designated as areas of critical environmental concern. Currently, there are no known bald eagle nesting sites on public lands in the planning area.

Least tern habitat meets the relevance and importance criteria, but would not be designated as areas of critical environmental concern. Currently, there are no known least tern nesting sites on public lands in the planning area.

The resource management plan/environmental impact statement evaluated 96 rivers and streams in the planning area to determine if any were eligible to be studied for possible inclusion into the National Wild and Scenic River System. All 96 rivers and streams were determined to be ineligible for further study. They would be unmanageable due to the lack of public lands along the shoreline.

Public participation has occurred throughout the resource management plan process. A notice of intent was filed in the **Federal Register** on October 3, 1989. Public meetings, mailings, and briefings were conducted to solicit comments and ideas. All of the comments presented throughout the process have been considered.

This notice meets the requirements of 43 CFR 1610.7-2 for designation of areas of critical environmental concern and the requirements of the Final Revised U.S. Department of the Interior—U.S. Department of Agriculture Guidelines for Eligibility, Classification, and Management of Rivers (47 FR 39454).

Dated: January 26, 1993.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 93-2854 Filed 2-5-93; 8:45 am]

BILLING CODE 4310-DN-M

[WY-040-03-4410-01]

Meeting of Rock Springs District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting agenda for the Rock Springs District Advisory Council.

SUMMARY: This notice sets forth the agenda and schedule for the next meeting of the Rock Springs District Advisory Council.

DATES: March 3, 1993, 9 a.m. until 3:30 p.m.

ADDRESSES: Rock Springs District Office, Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Marlowe E. Kinch, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will be limited to:

1. Introduction and opening remarks.
2. Review minutes of the last meeting.
3. Election of officers.
4. Review of public comments on the Green River Resource Management Plan.
5. Planning and environmental analysis update.
6. Minerals program update.
7. District wildlife program update.

The meeting is open to the public. Interested persons may make oral statements to the Council between 2:30 and 3:30 p.m. on March 3, 1993, or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager at the above address by March 1, 1993.

John S. McKee,

Associate District Manager.

[FR Doc. 93-2869 Filed 2-5-93; 8:45 am]

BILLING CODE 4310-22-M

[ID-943-03-4210-05; IDI-2267]

Order Providing for Opening of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order opens lands reconveyed to the United States to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: March 10, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384-3163.

1. The following described lands have been reconveyed to the United States pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869, 869-4):

Boise Meridian

T. 9 N., R. 27 E.,
Sec. 4, E½SE¼SE¼NW¼.

The area described contains 5 acres in Butte County.

2. At 9 a.m. on March 10, 1993, the reconveyed lands described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 10, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on March 10, 1993, the reconveyed private lands described above will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: January 26, 1993.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 93-2730 Filed 2-5-93; 8:45 am]

BILLING CODE 4310-GG-M

[WY-930-4210-04; WYW 117481]

Notice of Conveyance; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of public land in Fremont County for private land in Fremont County.

SUMMARY: This notice advises the public of completion of an exchange of Federal surface and mineral estate (excluding oil and gas), for private surface and mineral estate (excluding oil and gas), between the United States, Bureau of Land Management, and Roy J. Steers, Jr., and Elsie G. Steers, under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1716.

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Bureau of Land Management, Wyoming State Office, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82001, 307-775-6115.

SUPPLEMENTARY INFORMATION: The Federal surface and mineral estate (excluding oil and gas), of the following described land has been conveyed to Roy J. Steers, Jr., and Elsie G. Steers, of Lander, Wyoming:

Sixth Principal Meridian, Wyoming

T. 33 N., R. 101 W.,
Sec. 21, NE1/4NE1/4, NE1/4SE1/4.
The land described contains 80.00 acres.

1. In exchange for the Federal surface and mineral estate (excluding oil and gas), described above, the United States acquired the following described surface and mineral estate (excluding oil and gas):

Sixth Principal Meridian, Wyoming

T. 33 N., R. 101 W.,
Sec. 17, SE1/4NW1/4, NE1/4SW1/4.
The land described contains 80.00 acres.

2. The fair market value of the private land conveyed to the United States is

$14,000.00. The fair market value of the Federal land conveyed to Steers', is $14,000.00.

3. At 9 a.m. on March 11, 1993, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m., March 11, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 9 a.m. on March 11, 1993, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: January 27, 1993.

John A. Naylor,

Chief, Branch of Land Resources.

[FR Doc. 93-2736 Filed 2-5-93; 8:45 am]

BILLING CODE 4310-22-M

[AK-050-4710-01]

Camping Stay Limits for Public Lands; Glennallen District

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of camping stay limits for public lands in the Glennallen District, Glennallen, Alaska.

SUMMARY: Person(s) may camp within a designated campground or on public land, not closed or otherwise restricted to camping, within the Glennallen District for a total period of not more than fourteen (14) days during any sixty (60) day period. The 60 day period will begin the first full day the site is occupied following a previous 60-day period. The 14-day limit may be reached either through a number of separate visits or through a period of continuous occupation on public lands. Following the fourteen (14) day period, person(s) may not relocate within a distance of ten (10) miles of the site that was just previously occupied until completion of the sixty (60) day period. Under special circumstances and upon request, the authorized officer may give written permission for extension to the fourteen-day limit.

DATES: This camping stay limit is effective June 1, 1993.

ADDRESSES: For further information contact Gene R. Keith, Bureau of Land Management (BLM), Glennallen District Office, Mile 186.5 Glenn Highway, PO Box 147, Glennallen, Alaska 99588; Telephone (907) 822-3217.

FOR FURTHER INFORMATION CONTACT: Larry Kajdan, (907) 822-3217.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established in order to assist the Bureau in reducing the incidence of long term unauthorized occupancy being conducted under the guise of camping within campgrounds and on undeveloped public lands in the Glennallen District. Of equal importance is the problem of long-term camping which precludes equal opportunities for other members of the public to camp in the area which creates user conflicts. Authority for this camping stay limit is contained in CFR title 43, chapter II, part 8360, subparts 8364.1, 8365.1-2.

Gene R. Keith,

District Manager.

[FR Doc. 93-2883 Filed 2-5-93; 8:45 am]

BILLING CODE 4310-JA-M

National Park Service

Draft Rock Creek Park Tennis Center Environmental Impact Statement, Washington, DC

AGENCY: National Park Service (Interior).

ACTION: Notice to distribute the Draft Environmental Impact Statement for public comment.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces the release of the draft Rock Creek Park Tennis Center Environmental Impact Statement (EIS) for the Rock Creek Tennis Stadium. The document will be on public review until April 9, 1993. Public meetings will be held at the Rock Creek Nature Center, 5200 Glover Road, NW., Washington, DC, on March 9 and 10 at 7:30 p.m. to 10 p.m. and on the afternoon of March 10 at 2 p.m. to 4:30 p.m.

The draft EIS presents seven alternatives for future management and use of the Rock Creek Tennis Stadium. Alternative 1 allows the use of the tennis stadium for amateur and league events, only. Alternative 2 (NPS preferred alternative) allows for only one professional tennis tournament a year, in addition to amateur and league events. Alternative 3 (the no-action alternative) provides for two professional tennis tournaments a year held at the tennis stadium, in addition to amateur and league events. In Alternative 4, two professional tennis tournaments a year can be held at the stadium, in addition to amateur and league events, with impact mitigation. Alternative 5 provides for more than two professional tennis tournaments a year, and amateur and league events held at the tennis stadium. Alternative 6 allows the use of the tennis stadium for a variety of uses, including amateur and professional tennis, circuses, concerts, ice skating shows, and volleyball tournaments. Alternative 7 relocates the professional tennis tournaments and removes the stadium. In this alternative, the NPS would continue to support the Washington Tennis Foundation outreach programs in Rock Creek Park. An element common to all alternatives is the possible change of jurisdiction of the tennis stadium to the District of Columbia.

For copies of the draft EIS, please contact: Superintendent Rock Creek Park, at 5000 Glover Road, NW., Washington, DC 20015, or call 202-426-6832. Copies can also be reviewed at the Rock Creek Nature Center.

Again, the review period for this document ends April 9, 1993. All review comments must be postmarked no later than April 9, 1993.

Dated: February 3, 1993.

Burnice T. Kearny,

Acting Regional Director, National Capital Region.

[FR Doc. 93-2979 Filed 2-5-93; 8:45 am]

BILLING CODE 4310-70-M

Completion of Inventory of Native American Human Remains from Navajo County, AZ, in the Possession of the California Department of Parks and Recreation

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of the inventory of human remains from Navajo County, Arizona, in the possession of the California Department

of Parks and Recreation. Representatives of culturally affiliated Indian tribes are advised that these human remains will be retained by the Department at its headquarters facility until March 9, 1993, after which they may be repatriated to the culturally affiliated group.

The detailed inventory and assessment of these human remains has been made by the California Department of Parks and Recreation curatorial and archeological staff, contract specialists in physical anthropology and prehistoric archeology, and representatives of the Hopi Tribe.

The human remains consist of twenty unburned bones from one burial. There were no associated funerary objects. Records related to the original recovery of these remains and their acquisition by the California Department of Parks and Recreation are scant. The remains were originally part of the Hall Collection of Anthropology of North America, parts of which were acquired by the department in 1972. Accession records indicate the remains were recovered from an "ancient burial mound" located northeast of Winslow, Arizona, and identified as the remains of "Pueblo Indians."

Attribution of the remains as Puebloan and their recovery from a site located northeast of Winslow, Arizona, implies that they are culturally affiliated with the Hopi Tribe. The Hopi Tribe traces its ancestry directly from the Puebloan residents of northeast Arizona. The area northeast of Winslow, Arizona, has been recognized as part of Hopi aboriginal territory by the U.S. Indian Claims Commission.

Based on the above mentioned information, officials of the California Department of Parks and Recreation have determined pursuant to 25 U.S.C. (2) that there is a relationship of shared group identity which can be reasonably traced between these remains and the Hopi Tribe.

This notice has been sent off to officials of the Hopi Tribe. Representatives of any other Indian Tribe which believes itself to be culturally affiliated with these human remains should contact Pauline Grenbeaux Spear, Committee on Repatriation, P.O. 942896, Sacramento CA 94296–0001, (916) 324–6800 before March 9, 1993.

Dated: February 3, 1993.

Veletta Canouts,

Acting Departmental Consulting Archeologist and Chief, Archeological Assistance Division.

[FR Doc. 93–2929 Filed 2–5–93; 8:45 am]

BILLING CODE 4310-70-M

Notice of Completion of Inventory of Native American Human Remains from Oahu, Hawaii, Formerly in the Possession of the Museum of Anthropology, University of Oregon in Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of the inventory of human remains from Oahu, Hawaii, formerly in the possession of the Museum of Anthropology, University of Oregon, Eugene, Oregon.

The detailed inventory and assessment of the two sets of human remains from Oahu has been made by the museum staff and representatives of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, a nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii and recognized under 25 U.S.C. 3001 (6) to provide guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

The two sets of remains were given to the museum in 1940 by a private collector. Accession records indicate the remains came from the island of Oahu, Hawaii.

The human remains identified as 11–108 are very well preserved and nearly complete. They represent an adult female aged between 30 and 40 years at death. While precise identification of cultural affiliation is difficult, an assignment of this individual to the Mongoloid group can be made based on the intermediate grade alveolar prognathism and nasal shape, narrowing of the nasal bone at the nasal bridge, prominent forward-projecting cheek bones, straight facial profile, circular orbits, and a moderately wide plate. There are no morphological features evident that would suggest that the remains are anything other than those of a Hawaiian.

The human remains identified as 11–107 are nearly complete and represent an unknown sex juvenile aged between 3 and 5 years at death. Precise cultural affiliation of this juvenile is not possible. However, no morphological features evident in the remains would suggest that they are anything other than those of a Hawaiian.

Based on the above mentioned information, officials of the Museum of Anthropology, University of Oregon, have determined pursuant to 25 U.S.C. (2) that there is a relationship of shared group identity which can be reasonably traced between these remains and present-day Native Hawaiian organizations.

Representatives of culturally affiliated Native Hawaiian organizations are advised that the human remains have been transferred to representatives of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei who have agreed to delay reinterment until [thirty days following the publication date of this notice], after which they may be reinterred. This notice has been sent of officials of the Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact Don E. Dumond, Museum of Anthropology, University of Oregon, Eugene, OR 97403, telephone: (503) 346–5120, and Edward Ayau, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, P.O. Box 190, Hale 'iwa HI 96712–0190 (808) 587–0010, before March 10, 1993.

Dated: February 3, 1993.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 93–2930 Filed 2–5–93; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Bob Evans Farms, Inc., 3776 South High Street, Columbus, OH 43207–0863.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of Incorporation:

a. Mrs. Giles Country Kitchens, Inc., Incorporated in State of Virginia.

b. Owens Country Sausage, Inc., Incorporated in State of Texas.

c. Hickory Specialties, Inc., Incorporated in State of Tennessee.

B. 1. The parent corporation is Spartan Stores, Inc. and the address of the principal office is: 850 76th Street, SW., P.O. Box 8700, Grand Rapids, Michigan 49518.

2. Wholly-owned subsidiaries which will participate in the operations, and their States of Incorporation:

a. Valuland, Inc., a Michigan corporation.

b. L & L/Jiroch Distributing Company, Inc., a Michigan corporation.

c. Market Development Corporation, a Michigan corporation.

d. Shield Insurance Services, Inc., a Michigan corporation.

e. United Wholesale Grocery Company, a Michigan corporation.

f. Capistar, Inc., a Michigan corporation.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-2905 Filed 2-5-93; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 1110X)]

Consolidated Rail Corporation; Abandonment Exemption Between Gates and Brockport, NY

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 Subpart F—Exempt Abandonments to abandon approximately 12.1 miles of rail line between milepost ±4.5 at Gates, and milepost ±16.6 at Brockport, in Monroe County, NY.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7, 49 CFR 1105.8, 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 10, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 18, 1993.[3] Petitions to reopen or request for public use conditions under 49 CFR 1152.28 must be filed by March 1, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box. 41416, Philadelphia, PA 19101-1416.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by February 12, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-2904 Filed 2-5-93; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay including environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

In accordance with the policy of the Department of Justice, notice is hereby given that on January 19, 1993, a proposed consent decree in *United States* v. *American Steel Drum Services, et al.*, was lodged with the United States District Court for the Northern District of Ohio. This action was brought, pursuant to Sections 104, 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 *et seq.*, ("CERCLA"), for the recovery of costs expended by the United States and penalties incurred by Defendant's in connection with the cleanup of American Steel Drum Services Company Superfund site ("Site") located in Bedford, Ohio.

Under the decree, 2 defendants will pay $115,000 to the Hazardous Substances Superfund to reimburse the United States for response costs and penalties incurred at the Site in connection with emergency cleanup and removal activities at the Site.

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 of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to the *United States* v. *American Steel Drum Services, et al.*, DJ Ref. #90-11-3-344.

The proposed consent decree may be examined at the Office of the United States Attorney, 1800 Bank One Center, 600 Superior Avenue, East, Cleveland, Ohio 4414-2600 and at the Region V Office of the U.S. Environmental Protection Agency, 111 West Jackson Blvd., 3rd Floor, Chicago, Illinois 60604. Copies of the proposed consent decree may also be examined at the U.S. Department of Justice, Consent Decree Library, 1120 G. Street, NW., 4th Floor, Washington, DC 20005 (202-624-0892). A copy of the proposed consents may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $20.25 (twenty-five cents per

page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2879 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *AVX Corporation, et al.*, Civil Action No. 93-10104-K, was lodged on January 20, 1993, with the United States District Court for the District of Massachusetts. The proposed consent decree concerns the cleanup of a hazardous waste site known as the Sullivan's Ledge Site, which is located in New Bedford, Massachusetts. The proposed consent decree requires fifteen defendants to perform the remedy for the second operable unit at the site, and to reimburse EPA for 50% of the oversight costs for the remedy. The present worth value of these activities is estimated by EPA to be $2.95 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *AVX Corporation, et al.*, D.J. reference #90-11-2-388B.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Massachusetts, 1107 J.W. McCormack Building, POCH, Boston, Massachusetts; the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $55.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2878 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Amendment to Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed First Amendment to Consent Decree *United States* v. *Acushnet Company, et al.*, Civil Action No. 91-10706-K, was lodged on January 22, 1993, with the United States District Court for the District of Massachusetts. The original Consent Decree that is the subject of this proposed amendment (the "1991 decree") concerns the cleanup of a hazardous waste site known as the Sullivan's Ledge Site, which is located in New Bedford, Massachusetts. The 1991 decree was entered on June 11, 1991. The 1991 decree requires fourteen defendants to perform the remedy for the first operable unit at the Site.

The amendment is being proposed in connection with the proposed consent decree in *United States* v. *AVX Corporation, et al.*, Civil Action No. 93-10104-K, notice of which is being given separately. This new consent decree concerns the cleanup of the second operable unit of the Sullivan's Ledge Site. The amendment of the 1991 decree is being proposed in order to facilitate the coordination of the cleanup being performed at the first operable unit of the Site pursuant to the 1991 decree with the cleanup being performed at the second operable unit pursuant to the new decree. This is accomplished primarily through modification of the Statement of Work ("SOW"), which is incorporated into the 1991 decree by operation of Paragraph 3. These modifications to the SOW modify the activities under the 1991 decree to include certain activities necessary for the coordination of the two operable unit remedies, and revise the work sequence obligations accordingly.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Acushnet Company, et al.*, D.J. reference #90-11-2-388.

The proposed First Amendment to Consent Decree may be examined at the Office of the United States Attorney for the District of Massachusetts, 1107 J.W. McCormack Building, POCH, Boston, Massachusetts; the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC, 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC, 20005. In requesting a copy, please enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2881 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 8, 1993 a Consent Decree in *United States* v. *The Town of Bedford, et al.*, 90 Civ. 4652, was lodged with the United States District Court for the Southern District of New York. The proposed Consent Decree requires seven defendants in this action under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, to partially reimburse the United States a total of $1,171,000.00 for costs incurred by the United States in connection with the Katonah Municipal Well Superfund Site (the "Katonah Site"), located in the Town of Bedford, New York. In 1990, the United States entered into a Remedial Design/Remedial Action consent decree with the Town of Bedford in *United States* v. *Town of Bedford*, 89 Civ. 6481, wherein the Town of Bedford became obligated to conduct the remedial action at the Katonah Site, pay certain future oversight costs, and perform long term monitoring at the Site.

The settling defendants in the proposed consent decree are: the Town of Bedford, Gilman Realty Corp., Katonah Shopping Center Associates, Village Cleaners and Tailors, Inc.,

Nicola Fiumara, Giuseppe (Joseph) Tomasssi, and Honebon's Cleaners.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Town of Bedford et al.* [S.D.N.Y.] and DOJ Ref. No. 90-11-2-310A.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of New York, 100 Church Street, New York, New York 10007; at the Region II Office of the U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed Consent Decree can be obtained in person or by mail from the Consent Degree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the Consent Decree, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2877 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 19, 1993, a proposed partial Consent Decree in *United States* v. *Jonathan W. Bankert Jr., et al.* (Civil Action No. IP91-1181C) was lodged in the United States District Court for the Southern District of Indiana. The Complaint filed by the United States, on behalf of the United States Environmental Protection Agency, alleged claims against a number of defendants, including White Metal Rolling & Stamping Corp. and Industrial Plating, Inc., under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), for costs incurred by the United States in responding to the release or threat of release of hazardous substances at the Northside Sanitary Landfill site in Zionsville, Boone County, Indiana ("the Northside Site"). The partial Consent Decree requires defendants White Metal and Industrial Plating collectively to pay approximately $79,000, plus interest, to reimburse the Superfund for response costs incurred by the United States in connection with the Northside Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Jonathan W. Bankert Jr., et al.* and to DJ # 90-11-2-48H.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Southern District of Indiana, 274 United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204; (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590; and (3) the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005, (202) 624-0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005. For a copy of the Consent Decree please enclose a check in the amount of $3.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 93-2860 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with 42 U.S.C. 9622 and with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Remedial Design/Remedial Action Consent Decree in *United States* v. *Chrysler Corp., et al.*, No. 93CV70202, has been lodged with the United States District Court for the Eastern District of Michigan, on January 19, 1993. The proposed Consent Decree concerns cleanup of the Carter Industrials, Inc. Superfund Site (the "Carter Site"), a hazardous waste site located at or near 4690 Humboldt Street in Detroit, Wayne County, Michigan.

The proposed Consent Decree requires fourteen defendants to perform a cleanup at the Carter Site and to pay certain costs that the United States Environmental Protection Agency has incurred in connection with the Carter Site. In tandem with operation and maintenance work, the main components of the remedy that will be implemented include the following actions: (1) Decontamination and dispoal of contaminated structures; (2) low-temperature thermal desorption ("LTTD") of soils contaminated with polychlorinated biphenyls ("PCBs") at levels greater than 10 parts per million ("ppm"); (3) off-site incineration of PCB-containing oils and organic material that will be recovered from the treated soils; (4) an on-site containment cell for residue from the LTTD system, and untreated PCB-contaminanted soils, that contain less than 10 ppm PCBs; and (5) on-site/off-site restoration of excavated soil areas.

Under the proposed Consent Decree, the Settling Defendants also would reimburse $2,931,225.00 of the costs that the United States has incurred in connection with the Carter Industrials Site.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Chrysler Corp., et al.*, D.J. Ref. 90-11-2-194C.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of Michigan, 817 Federal Building, 231 West Lafayette, Detroit, Michigan 48226, at the Office of Regional Counsel, United States Environmental Protection Agency, Region 5, 111 West Jackson Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please specify the documents required, together with a check payable to the "Consent Decree Library" for the appropriate amount, as follows:

Consent Decree only ($.25 per page reproduction costs): $23.50.

Consent Decree with appendices: $60.00.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2872 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on January 15, 1993, a proposed Consent Decree in *United States* versus *Martin Garabedian and Violent Garabedian, as Trustee of The Boundary Hill Trust,* Civil Action No. 93-10086-WF, was lodged with the United States District Court for the District of Massachusetts resolving the matter. The proposed Consent Decree concerns the response to releases and threatened releases of hazardous substances at the Garabedian Superfund Site located in Methuen, Massachusetts and Pelham and Salem, New Hampshire pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601 *et seq.*

The proposed Consent Decree provides for a total payment by Defendants of $170,000, which includes the Defendants' reimbursement of $103,582, representing 100% of the response costs incurred by EPA at the Site, including interest, and an additional payment by Defendants of $66,412 in civil penalties and punitive damages for failure to comply with the Section 106 Administrative Order.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* versus *Martin Garabedian and Violet Garabedian, as Trustee of the Boundary Hill Trust,* D.O.J. Ref. No. 90-11-2-845.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Massachusetts, 1107 J.W. McCormack Post Office and Courthouse, Boston, Massachusetts, 02109; at the Region I Office of the Environmental Protection Agency, JFK Federal Building, Boston, Massachusetts, 02203; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC, 20005 (202-624-0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC, 20005. In requesting a copy, please enclose a check in the amount of $3.75 (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. 93-2875 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Agreed Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 19, 1993 a proposed Agreed Order in *United States* v. *GTE North Inc. and Manley Motor Sales,* Action No. 90-C-20302, was lodged in the United States District Court for the Northern District of Illinois. The Agreed Order addresses the hazardous waste contamination at the Belvidere No. 1 Municipal Landfill site in Belvidere, Boone County, Illinois ("the Belvidere Site"). The Agreed Order consolidates the First and Second Claims for Relief of *United States* v. *GTE North Inc. and Manley Motor Sales,* Action No. 90-C-20302, as amended, and *United States, State of Illinois* v. *City of Belvidere, et al.,* Action No. 89-C-20015. The Agreed Order also amends the Consent Decree entered by the Court in *United States, State of Illinois* v. *City of Belvidere, et al.,* Action No. 89-C-20015, on April 12, 1989. The Agreed Order requires the defendant GTE North, Inc. to implement the remedial action selected and cleanup standards set forth in the Record of Decision and Scope of Work for the Belvidere Site. Additionally, the defendant GTE North, Inc. is required to reimburse the United States for $575,000, plus interest, in unrecovered past costs incurred by U.S. Environmental Protection Agency at the Belvidere Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Agreed Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *GTE North Inc. and Manley Motor Sales,* D.J. Ref. No. 90-11-3-248A.

The proposed Agreed Order may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Illinois, 211 South Court Street, Rockford, Illinois, 61101 (contact Assistant United States Attorney James Zuba); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590 (contact Assistant Regional Counsel John Tielsch); and (3) at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, (202) 347-2072. Copies of the proposed Agreed Order may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, telephone (202) 347-7829. For a copy of the Agreed Order please enclose a check in the amount of $1.25 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environmental & Natural Resources Division.

[FR Doc. 93-2876 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decrees

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 10, 1992, two proposed Consent Decrees in *United States* v. *Lore Fiano, et al.,* Civil No. 2:91CV00814, were lodged with the United States District Court for the District of Connecticut. The proposed Consent Decrees settle the United States' claims that the defendants had violated provisions of the National Emission Standards for Hazardous Air Pollutants for Asbestos ("NESHAP") promulgated pursuant to the Clean Air Act.

Under the terms of the Consent Decrees, settling defendants will pay a total of $68,250 in civil penalties, comply with the asbestos NESHAP and the Clean Air Act in the future, and undertake certain additional activities as part of a remedial program.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decrees. Comments should be addressed to the Section Chief of the Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer

to *United States* v. *Lore Fiano*, D.O.J. Ref. 90-5-2-1-1602.

The proposed Consent Decrees may be examined at the Region I Office of the Environmental Protection Agency, 1 Congress Street, 10th Floor, Boston, Massachusetts 02203. Copies of the Consent Decrees may be examined at the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20005 (202 624-0892). A copy of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20005 (202 624-0892). In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.75 per Decree (25 cents per page reproduction cost) made payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2865 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

In accordance with the policy of the Department of Justice, notice is hereby given that on January 19, 1993 two proposed consent decrees in *United States* v. *Jennie Muir, et al.*, were lodged with the United States District Court for the Eastern District of Michigan. This action was brought, pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 *et seq.* ("CERCLA"), for the recovery of costs expended by the United States in connection with the cleanup of the MCI, Inc. Superfund site ("Site") located in Detroit, Wayne County, Michigan.

Under the first decree, 39 defendants will pay $963,395.70 to the Hazardous Substances Superfund to reimburse the United States for response costs incurred at the Site in connection with emergency cleanup and removal activities at the Site. Under the second decree an additional 10 defendants will pay $38,986.00 to the Hazardous Substances Superfund to reimburse the United States for additional response costs incurred at the Site.

The Department of Justice will receive comments relating to the proposed consent decrees for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Jennie Muir, et al.*, DJ Ref. #90-11-3-824B.

The proposed consent decrees may be examined at the office of the United States Attorney, 231 Lafayette, 8th Floor, Detroit, Michigan 48226, and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Blvd., 3d floor, Chicago, Illinois 60604. Copies of the proposed consent decrees may also be examined at the Consent Decree Library, 1120 G. Street NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $20.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 93-2859 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given that on January 20, 1993, a proposed Consent Decree in *United States* v. *Niagara Transformer Corporation*, Civil No. 89-1358A, was lodged with the United States District Court for the Western District of New York. The proposed Consent Decree settles the United States' claims for response costs against Bell Aerospace Textron, General Electric Company, General Motors Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, and Union Carbide Corporation.

The complaint in the Niagara Transformer action was filed pursuant to CERCLA to recover costs incurred by EPA in taking response actions at the Wide Beach Development Superfund Site in Brant, New York.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Niagara Transformer Corporation*, D.O.J. Ref. 90-11-3-417.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 68 Court Street, Buffalo, New York, 14202, the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202-624-0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.75 (25 cents per page reproduction cost) made payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2873 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Consortium for Advanced Manufacturing-International, Inc.

Notice is hereby given that, on January 5, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Consortium for Advanced Manufacturing-International, Inc. (formerly Computer Aided Manufacturing-International, Inc.) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Computer Aided Manufacturing-International, Inc. (CAM-I) has changed its corporate name to Consortium for Advanced Manufacturing-International, Inc. The current industrial member companies in the United States are:

Allied-Signal-Kansas City Div., Kansas City, MO; Arthur Andersen, Los Angeles, CA; The Boeing Company, Seattle, WA; Caterpillar, Inc., Peoria, IL; Clark Equipment Co., South Bend, IN; Deloitte & Touche, Boston, MA; Department of Defense, Washington,

DC; Eastman Kodak Company, Rochester, NY; Electronic Data Systems, Warren, MI; Emerson Electric, St. Louis, MO; Ernst & Young, Cleveland, OH; General Dynamics-Ft. Worth Div., Ft. Worth, TX; General Electric, Schenectady, NY; Goldstar, Changwon City, KOREA; Grumman Aerospace, Bethpage, NY; Harris Corporation, Melbourne, FL; Honeywell, Inc., Minneapolis, MN; Hughes Aircraft Co., El Segundo, CA; IBM Corporation, Boca Raton, FL; KPMG Peat Marwick, Palo Alto, CA; LTV Aerospace & Defense Co., Dallas, TX; Martin Marietta Energy Sys., Oak Ridge, TN; McDonnell Douglas Corp., St. Louis, MO; National SemiConductor, Santa Clara, CA; NIES, Canberra City, AUSTRALIA; Northrop Corp., Hawthorne, CA; Price Waterhouse, Cleveland, OH; Procter & Gamble Co., Cincinnati, OH; Texas Instruments, Plano, TX; U.S. Air Force, Dayton, OH; U.S. Navy, Alexandria, VA; and Westinghouse Electric Corporation, Columbia, MD. The current industrial member companies in Europe are: Aerospatiale, Paris, FRANCE; Groupe Bull, Paris, FRANCE; CTE/ITM, Genoa, ITALY; Coopers & Lybrand, Deloitte, London, ENGLAND; Eurosept, Boulogne, FRANCE; Finmeccanica, Rome, ITALY; IBM Eurocoordination, Parris, FRANCE; IPL–TNO, Apeldoorn, THE NETHERLANDS; IVF Swedish Institute, Goteborg, SWEDEN; Lucas Engineering, Solihull, West Midlands, ENGLAND; Messerschmitt-Bolkow-Blohm, Munich, GERMANY; Nuove Pignone, Florence, ITALY; Phillips International, Eindhoven, THE NETHERLANDS; Telos Management, Milan, ITALY; and Valmet Corporation, Helsinki, FINLAND. Current industrial member companies in the Pacific region are: Fuji Electric, Tokyo, JAPAN; Fujitsu, Ltd., Kawasaki, JAPAN; Hitachi, Ltd., Yokohama, JAPAN; and Honda Engineering, Sayama City, JAPAN. Current educational members in the United States are; Arizona State Univ., Tempe, AZ; Brigham Young Univ., Provo, UT; California Polytechnic, San Luis Obispo, CA; Carnegie Mellon Univ., Pittsburgh, PA; Illinois Institute of Technology, Chicago, IL; Massachusetts Inst. of Tech., Cambridge, MA; Merrick School of Business, Baltimore, MD; North Caroline State, Raleigh, NC; North Texas State, Denton, TX; Oklahoma State Univ., Stillwater, OK; Portland State Univ., Portland, OR; Purdue Univ., Ft. Wayne, IN; Rensselaer Polytechnic, Troy, NY; Stanford Univ., Stanford, CA; Univ. California (UCLA), Los Angeles, CA; Univ. of Maryland, Baltimore, MD; Univ. of Massachusetts, Amherst, MA; Univ. of Minnesota, Minneapolis, MN; Univ. of Missouri-Rolla, Rolla, MO; Univ. of New Hampshire, Durham, NH; Univ. of San Francisco, San Francisco, CA; Univ. of Southern California, Los Angeles, CA; Univ. of Texas, Arlington, Arlington, TX; Univ. of Texas, Austin, Austin, TX; Univ. of Texas, El Paso, El Paso, TX; and Univ. of Waterloo, Waterloo, CANADA. Current educational members in Europe are: Cranfield Institute of Tech., Poole, ENGLAND; Groupe H.E.C., Jouy-en-Josas, FRANCE; Helsinki Univ. of Technology, Espoo, FINLAND; Katholieke Universiteit Leuven, Heverlee, BELGIUM; Loughborough Univ. of Tech., Leicestershire, ENGLAND; Politechnico di Milano, Milan, ITALY; Royal Institute of Stockholm, Stockholm, SWEDEN; Tech. Institute of Aachen, Aachen, GERMANY; Univ. Frederciana Karlsruhe, Karlsruhe, GERMANY; Univ. of Trondheim, Norway, Trondheim, NORWAY; and Univ. of Twente, Twente, THE NETHERLANDS. The current educational members in the Pacific region are Kyoto Univ., Kyoto, JAPAN; and Kobe Univ., Kobe, JAPAN.

The Intelligent Manufacturing Management Program has been discontinued, and the Quality Customer/Quality Supplier Program (QCQS) has been added.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and the Consortium for Advanced Manufacturing-International, Inc. intends to file additional written notification disclosing all changes in membership.

On December 28, 1984, Computer Aided Manufacturing-International, Inc. (CAM–I), now known as Consortium for Advanced Manufacturing-International, Inc., filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on January 24, 1985 (50 FR 3425–3426).

The last notification was filed with the Department on January 2, 1992. A notice was published in the Federal Register pursuant to section 6(b) of the Act on April 2, 1992 (57 FR 11337).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–2856 Filed 2–5–93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Smart House Project

Notice is hereby given that, on January 5, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Smart House, L.P., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership of the Smart House Project ("the Project"). The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following party is now participating in the Project: Xantech Corporation, Sylmar, CA. The following parties are no longer involved in the Project: Arkla, Inc.; BellSouth Services; Columbia Gas Distribution Companies; Consolidated Natural Gas Company; Consumers Power Company; Delmarva Power & Light Company; Florida Power & Light Company; Halstead Industries; Houston Lighting & Power Company; National Rural Electric Cooperative Association; Northern Illinois Gas Company; Oglethorpe Power Corporation; Oklahoma Natural Gas Company; Pacific Gas & Electric Company; Pittway Corporation; Portland General Electric Company; Public Service Company of Colorado; Sears, Roebuck & Co.; Southern California Edison Company; Universal Electronics Inc.; Virginia Power Company; WaterFurnace International Inc.; Wisconsin Electric Power Company. No other changes have been made in either the membership or planned activity of the Project.

Participants of the Project are developing a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features.

On June 14, 1985, the predecessor in interest to Smart House, L.P., filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on October 10, 1985 (50 FR 41428).

The last notification was filed with the Department on October 5, 1992. A notice was published in the Federal Register pursuant to section 6(b) of the Act on December 17, 1992 (57 FR 60005).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–2857 Filed 2–5–93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Spray Drift Task Force

Notice is hereby given that, on January 13, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Spray Drift Task Force has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the Spray Drift Task Force Joint Data Development Agreement. The notice was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the change consists of the addition of Agro-Gor Corporation, a division of Agrico Chemical Company, New Orleans, LA.

No other changes have been made in either the membership, corporate name or planned activities of the venture.

On May 15, 1990, the Spray Drift Task Force filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act of July 5, 1990 (55 FR 27701). The last notification was filed with the Department on April 27, 1992. A notice was published in the **Federal Register** on May 22, 1992 (57 FR 21824).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-2858 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Immigration And Naturalization Service

[AG Order No. 1680-93]

Termination of Designation of Lebanon Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice terminates the Attorney General's designation of Lebanon under the Temporary Protected Status program provided for in section 244A of the Immigration and Nationality Act (Act). Accordingly, eligible aliens who are nationals of Lebanon, or who have no nationality and who last habitually resided in Lebanon, will lose their eligibility for Temporary Protected Status.

EFFECTIVE DATE: The termination of the Temporary Protected Status designation for Lebanon is effective April 9, 1993.

FOR FURTHER INFORMATION CONTACT: Kathryn A. Kazalonis, Senior Immigration Examiner, Immigration and Naturalization Service, room 7223, 425 I Street, NW, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: Under section 244A of the Act, as amended by section 302(a) of Public Law 101-649 and section 304(b) of Public Law 102-232, (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General, or who have no nationality and last habitually resided in that state. The Attorney General so designates a state, or a part thereof, upon finding that the state is experiencing ongoing armed civil strife, environmental disaster, or certain other extraordinary and temporary conditions.

On March 21, 1991, the Attorney General designated Lebanon for Temporary Protected Status for a period of 12 months. 56 FR 12746. On January 20, 1992, the Attorney General extended the designation of Lebanon under the Temporary Protected Status program for an additional 12 months until March 28, 1993. 57 FR 2931.

Section 244A(b)(3) of the Act requires the Attorney General to review, at least 60 days before the end of the initial period of designation or any extended period of designation, the conditions in a state designated under section 244A(b)(3). The section also requires the Attorney General to determine whether the requirements for such designation continue to be met, and to terminate a state's designation when the Attorney General determines that those requirements are not met. In this notice, the Attorney General terminates the designation of Lebanon, pursuant to section 244A(b)(3) of the Act.

Notice of Termination of Designation of Lebanon Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, and pursuant to sections 244A(b)(3) (A) and (C) of the Act, I find, after consultation with the appropriate agencies of the United States Government, that the extraordinary and temporary conditions found to exist in Lebanon on March 21, 1991, and on January 20, 1992, are not presently in existence. The United States embassy in Beirut reports that the security situation for Lebanese citizens is steadily improving. The Lebanese government's amnesty law specifically protects Lebanese citizens from prosecution for virtually all actions taken during the war years, and the majority of Lebanese go about their daily activity without hindrance. While the few persons who might still encounter difficulties in Lebanon due to their affiliations could apply for asylum, we believe that Temporary Protected Status is no longer appropriate for Lebanese citizens in general.

Accordingly, it is ordered that the designation of Lebanon for Temporary Protected Status is terminated effective 60 days after publication of this notice in the **Federal Register**.

Dated: January 27, 1993.

Stuart M. Gerson,

Acting Attorney General.

[FR Doc. 93-2861 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Office of Justice Programs

Office for Victims of Crime

Discretionary Grant Program and Application Information for Fiscal Year 1993; Correction

AGENCY: Office for Victims of Crime, Office of Justice Programs, Justice.

ACTION: Correction.

SUMMARY: In the public announcement of availability of the funds and application information under the Discretionary Grant Program beginning on page 5416 in the issue of Thursday, January 21, 1993, make the following correction:

On page 5417 in the third column in the first paragraph, the fourth sentence should read: "At least 70 percent of the grant funds is to be allotted for the purchase of workshop presentations from the list; or in special cases, other workshop presentations may be purchased with OVC approval."

Dated: January 29, 1993.

Carolyn Hightower,

Acting Director, Office for Victims of Crime.

[FR Doc. 93-2906 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-18-P

Office for Victims of Crime

FY 1993 Assistance to Victims of Federal Crime in Indian Country Discretionary Grant Program Application Kit; Correction

AGENCY: Office for Victims of Crime Office of Justice Programs, Justice.

ACTION: Correction.

SUMMARY: In the public announcement of the availability of FY 1993 Assistance to Victims of Federal Crime in Indian Country Discretionary Grant Program Application Kit beginning on page 584 in the issue of Wednesday, January 6, 1993, make the following correction:

On page 584, in the second column, the Summary paragraph should include Florida and Oklahoma. The Summary paragraph should read, "The Office for Victims of Crime (OVC) is publishing this Notice of availability of the FY 1993 Discretionary Grant Application Kit for the State agencies appointed by the Governors in Alabama, Colorado, Florida, Iowa, Louisiana, Mississippi, Nebraska, North Carolina, Oklahoma, and Texas."

Dated: January 29, 1993.

Carolyn A. Hightower,

Acting Director, Office for Victims of Crime.

[FR Doc. 93-2907 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-18-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education Advisory Panel: Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that renewal of the Arts in Education Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-2897 Filed 2-5-93; 8:45 am]

BILLING CODE 7537-01-M

Challenge/Advancement Advisory Panel: Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)), notice is hereby given that renewal of the Challenge/Advancement Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance with the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-2898 Filed 2-5-93; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR Part 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that renewal of the Dance Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-2899 Filed 2-5-93; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel; Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR paragraph 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended [20 U.S.C. 959(a)(4)], notice is hereby given that renewal of the Design Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts,

National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-2900 Filed 2-5-93; 8:45 am]

BILLING CODE 7537-01-M

Expansion Arts Advisory Panel: Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR Part 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that renewal of the Expansion Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-2901 Filed 2-5-93; 8:45 am]

BILLING CODE 7537-01-M

Folk Arts Advisory Panel: Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)), notice is hereby given that renewal of the Folk Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-2902 Filed 2-5-93; 8:45 am]

BILLING CODE 7537-01-M

Literature Advisory Panel; Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)), notice is hereby given that renewal of the Literature Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-2908 Filed 2-8-93; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Media Arts Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that renewal of the Media Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated; February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-2909 Filed 2-5-93; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Museum Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that renewal of the Museum Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) Policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2910 Filed 2–5–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Music Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4), notice is hereby given that renewal of the Music Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2911 Filed 2–5–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Opera-Musical Theater Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR par. 101–6), and under the authority of Section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)), notice is hereby given that renewal of the Opera-Musical Theater Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2913 Filed 2–5–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Presenting and Commissioning Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)), notice is hereby given that renewal of the Presenting and Commissioning Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2914 Filed 2–5–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Office for Public Partnership Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of

1965, as amended (20 U.S.C. 959(a)(4)), notice is hereby given that renewal of the Office for Public Partnership Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-2912 Filed 2-5-93; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Theater Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)), notice is hereby given that renewal of the Theater Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with the respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) Policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-2915 Filed 2-5-93; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Visual Arts Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that renewal of the Visual Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93-2916 Filed 2-5-93; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL FOUNDATION ON THE ARTS AND SCIENCES

Folk Arts Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Folk Arts Advisory Panel (National Heritage Fellowships Section) to the National Council on the Arts will meet on March 3-4, 1993 from 9 a.m.-6:30 p.m. and March 5 from 9 a.m.-4 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, 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 24, 1992, this session 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) 682-5439.

Dated: February 2, 1993.

Yvonne M. Sabine,

Panel Operations; National Endowment for the Arts.

[FR Doc. 93-2896 Filed 2-5-93; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

February 3, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On January 4, 1993 the National Science Foundation published a notice in the Federal Register of permit applications received. A permit was issued to Sean Turner on February 2, 1993.

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93-2969 Filed 2-5-93; 8:45 am]

BILLING CODE 7555-01-M

Statement of Organization, Functions, and Delegations of Authority

AGENCY: National Science Foundation

ACTION: Statement of organization, functions and delegations of authority.

SUBJECT: In accordance with the Administrative Procedures Act (5 U.S.C. 551 *et seq.*], this notice replaces the Statement of Organization last published at 56 FR 40917–40926 of August 16, 1991.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Modestine Rogers, National Science Foundation, Division of Human Resource Management, 1800 G Street, NW., room 208, Washington, DC 20550, telephone (202) 357–9441.

Dated: February 2, 1993.

John F. Wilkinson,

Acting Division Director, Division of Human Resource Management.

I. Creation and Authority.

The National Science Foundation (NSF) is an independent agency of the U.S. Government, established by the National Science Foundation Act of 1950, as amended, and related legislation, 42 U.S.C. 1861 *et seq.*, and was given additional authority by the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885), and title I of the Education for Economic Security Act (20 U.S.C. 3911 to 3922). The Foundation consists of the National Science Board of 24 part-time members and a Director (who also serves as *ex officio* National Science Board member), each appointed by the President with the advice and consent of the U.S. Senate. Other senior officials include a Deputy Director who is appointed by the President with the advice and consent of the U.S. Senate, and eight Assistant Directors.

The Foundation's organic legislation authorizes it to engage in the following activities:

A. Initiate and support, through grants and contracts, scientific and engineering research and programs to strengthen scientific and engineering research potential, and education programs at all levels, and appraise the impact of research upon industrial development and the general welfare.

B. Award graduate fellowships in the sciences and in engineering.

C. Foster the interchange of scientific information among scientists and engineers in the United States and foreign countries.

D. Foster and support the development and use of computers and other scientific methods and technologies, primarily for research and education in the sciences.

E. Evaluate the status and needs of the various sciences and engineering and take into consideration the results of this evaluation in correlating its research and educational programs with other Federal and non-Federal programs.

F. Maintain a current register of scientific and technical personnel, and in other ways provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and technical resources in the United States, and provide a source of information for policy formulation by other Federal agencies.

G. Determine the total amount of Federal money received by universities and appropriate organizations for the conduct of scientific and engineering research, including both basic and applied, and construction of facilities where such research is conducted, but excluding development, and report annually thereon to the President and the Congress.

H. Initiate and support specific scientific and engineering activities in connection with matters relating to international cooperation, national security, and the effects of scientific and technological applications upon society.

I. Initiate and support scientific and engineering research, including applied research, at academic and other nonprofit institutions and, at the direction of the President, support applied research at other organizations.

J. Recommend and encourage the pursuit of national policies for the promotion of basic research and education in the sciences and engineering. Strengthen research and education in the sciences and engineering, including independent research by individuals, throughout the United States.

K. Support activities designed to increase the participation of women and minorities and others under-represented in science and technology.

II. Overview of Operations

A. *General Procedures, Forms, Descriptions of Programs.* NSF supports basic and applied research and education in the sciences and engineering. The Foundation accomplishes its mission primarily through the award of grants and other agreements to universities, colleges, and other nonprofit organizations, as well as to individuals and profit-making organizations. In instances where NSF has a specially assigned mission, or where services are being procured, contracts are used rather than grants. Ordinarily grants are made on the basis of merit after a review process involving several qualified outside commentators drawn from the scientific, educational, and industrial communities.

B. *Honorary Awards.* The National Science Foundation annually presents the Alan T. Waterman Award to an outstanding young scientist or engineer for support of research and study. From time to time, the National Science Board presents the Vannevar Bush Award to a person who, through public service activities in science and technology, has made an outstanding contribution toward the welfare of the Nation. The two awards are designed to encourage individuals to seek to achieve the Nation's objectives in scientific and engineering research and education. The Foundation also provides support for the President's Committee on the National Medal of Science.

III. Organization

The Foundation is organized along functional and disciplinary lines corresponding to program support of science, engineering, and science and engineering education.

A. *National Science Board (NSB).* The National Science Board is composed of 25 members, including the Director of the Foundation *ex officio*. Members serve for 6-year terms and are selected because of their distinguished service in the fields of the basic, medical, or social sciences, engineering, agriculture, education, public affairs, or research management. They are chosen in such a way as to be representative of scientific and engineering leadership in all areas of the Nation. The officers of the Board, the Chair and Vice Chair, are elected by the Board from among its members for 2-year terms. The Board exercises authority granted it by the NSF Act, including establishing policies for carrying out the purposes of the Act. Meetings of the Board are governed by the Government in the Sunshine Act (Public Law 94–409) and the Board's Sunshine Act (45 CFR 614). The policies of the Board on the support of science and engineering and development of human resources are generally implemented through the various programs of the Foundation. The National Science Board is required by statute to render a biennial report on indicators of the state of science and engineering to the President for submission to the Congress.

The NSB Office is responsible for operating and representing the National Science Board, identifying policy issues for consideration by the Board, developing congressional testimony for Board members, and providing liaison

between the Board and the Director and his staff.

B. *Office of Inspector General (OIG).* OIG is responsible for audit and oversight of the financial, administrative, and programmatic aspects of NSF's activities. OIG is the focal point of contact with other Federal audit organizations in the Executive Branch and with GAO. OIG is organized with four subordinate components: External Audit, Internal Audit, Oversight, and Investigations.

C. *Director.* The Director of the National Science Foundation is Chief Executive Officer of the Foundation and serves *ex officio* as a member of the National Science Board and as Chairman of its Executive Committee. The Director is responsible for the execution of the Foundation's programs in accordance with the NSF Act and other provisions of law. The Director is also responsible for duties delegated to him by the Board and for recommending policies to the Board. The Director is assisted by a Deputy Director who is appointed by the President, with the advice and consent of the Senate. The Assistant to the Director for Science and Technology serves as science advisor to the Director providing broad policy-level advice, assistance and support on a wide range of scientific and policy matters relevant to the mission of the Foundation.

IV. Activities of the Foundation

The activities of the Foundation are carried out by a number of Foundation components reporting to the Director through their respective senior officers.

A. Staff Offices

1. *Office of Equal Opportunity Programs (OEO).* OEO is responsible for providing a leadership role in the Agency's efforts to increase the participation and development of all individuals, especially the underrepresented, in all aspects of its science and engineering activities both internally and externally. The Office provides assistance to management in developing, maintaining, and carrying out a continuing Agency-wide affirmative action program and for developing all other aspects of the Agency's equal opportunity programs.

2. *Office of Legislative and Public Affairs (OLPA).* OLPA is responsible for representing the Foundation, the Director, and key associates in relationships with the Congress, the communications media and the public, various academic groups and professional societies, institutions, and other NSF clientele. Legislative responsibilities include providing the coordination, analysis, liaison, and other assistance necessary for the annual congressional consideration of the NSF budget as well as all science and technology related legislative issues and providing information and advice to the Director and key NSF staff on interactions with the Congress. Public affairs and communications responsibilities include informing and educating the general and specialized publics about NSF programs, activities, and services; maintaining relations with the public and news media (both print and electronic media); preparing and issuing reports, audio-visual materials, and publications that serve the general and specialized publics; and responding to both Freedom of Information Act requests and general inquiries from the public. The Office is also responsible for coordinating special projects and activities such as National Science and Technology Week; overseeing the work of the NSF Historian; and approving and coordinating publications created by other NSF offices, in accordance with OMB requirements.

3. *Office of Planning and Assessment (OPA).* OPA provides the Director, the National Science Board, and senior NSF staff with studies, assessments, and analyses of NSF programs and activities and the science and engineering research and education capabilities of the Nation. Specifically, OPA (a) conducts post-performance evaluations of NSF programs and activities, evaluating their contributions to scientific, technological, and educational progress, and, as appropriate, recommending alternative programs or approaches; (b) provides analyses of NSF budgeting and programmatic data as inputs for strategic planning exercises; (c) analyzes science and engineering infrastructure, funding, and personnel data to estimate the effects of alternative policies; (d) assists NSF line managers in the design and implementation of evaluation and assessment plans for their activities and programs; and (e) monitors operations of the merit review system by assessing the integrity of the award decision process and providing the Director with regular reports on the efficacy of the system.

4. *Office of Polar Programs (OPP).* OPP is responsible for funding and management of the U.S. Antarctic Research Program and for support of a small Arctic Research Program. It also provides staff assistance to plan and coordinate Federal research support in the Arctic. The U.S. Antarctic Research Program aims at extending knowledge of Antarctica, including its glaciers and geology, the surrounding ice and oceans, its lower and upper atmosphere, and terrestrial and marine biota. International cooperation contributes to research objectives, to environmental protection, and to strengthening the Antarctic Treaty system. Much polar research relates environmental processes to a global context. As in the Antarctic, the Arctic Research Program supports science spanning the full spectrum of the environment from the ocean bottom through the sea ice cover and out into space where the first interactions of solar radiation with the earth's atmosphere begin. Studies of glaciers and land-based ecosystems also are supported. In addition, the Office has major responsibilities for NSF implementation of the Arctic Research and Policy Act of 1984 that calls for the development and implementation of national policies and research plans and more extensive coordination of planning and budgeting by Federal agencies.

5. *Office of Science and Technology Infrastructure (OSTI).* OSTI was established in the Office of the Director (1) to provide leadership, coordination, and oversight for the Foundation's Science and Technology Centers; (2) to support academic research facilities modernization and major state-of-the-art research instrumentation; and (3) to help stimulate other sectors (i.e., industry and the States) to support and participate in these efforts.

6. *Office of the General Counsel (OGC).* OGC provides legal advice to the Director, the National Science Board, and NSF staff and represents them in legal matters, including the development of laws and regulations likely to affect the NSF, science, or the use of science. OGC also prepares and coordinates NSF comments on proposed legislation.

B. Offices and Directorates

1. *Office of Budget, Finance, and Award Management (BFA)*

a. *Director, Office of Budget, Finance, and Award Management.* The Director, BFA, who is also the Chief Financial Officer, is the principal adviser to the Director on all financial matters, including resource allocation and management of the Foundation, and is directly responsible for a wide range of activities comprising NSF's budget, finance, and grant and contract operations. This responsibility includes the management of (1) budget operations and development of operating plans; (2) program and special analyses; (3) the financial accounting of all Foundation operations; and (4) the administration of grants and procurements. As CFO, the Director provides leadership over the full range of financial management issues,

including financial planning, financial statement preparation, and performance measurement. The CFO's responsibilities in this capacity include the formulation and development of the Foundation's budget and presentation of the budget to the Office of Management and Budget and to the Congress.

b. *Division of Budget (BD).* The Budget Division is responsible for supporting the Foundation's resource planning and management activities, and for the integration and translation of plans into resource requests. This includes presenting and defending the Agency's budget requests to OMB and to the Congress; coordinating the development of long range financial and resource plans for the Foundation, providing independent analysis of programmatic issues; reviewing action and information items prepared for NSB consideration; analyzing budget and program plans developed for the Federal Coordinating Council for Science, Engineering and Technology (FCCSET); developing and maintaining budget/management procedures, data bases and monitoring systems for providing budget control, including outlay forecasts, on behalf of the Director; developing and managing the annual operating plans of the Foundation's major fund accounts; and managing the Foundation's Salaries and Expenses budget, including the FTE allocation and utilization processes.

c. *Division of Financial Management (DFM).* DFM is responsible for the development, coordination, and direction of financial management policies, programs, and operations, and for the design of modern automated business management systems. DFM provides funds control, payroll and disbursing services, and maintains accounting systems to manage the financial aspects of Foundation operations and to produce timely and accurate data for financial management and budgetary purposes.

d. *Division of Grants and Contracts (DGC).* DGC is responsible for the award process for all Agency grants, contracts, cooperative agreements and other arrangements which consist of over 20,000 award transactions annually. This responsibility encompasses: negotiation, issuance, administration and close out of such awards in accordance with relevant laws, regulations, Executive Orders, OMB Circulars, Foundation policy and procedures, and sound business practices; negotiation of indirect cost rates, management of indirect costs, and cost analysis; review, negotiation and resolution of all audits and related reviews of NSF funded grants, contracts, and other agreements; tracking and reporting on NSF assistance and procurement activities; coordinating responses to FOIA requests related to awards and proposals; grant, contract and research administration policy development and coordination, including responsibility for maintaining the NSF Grant Policy Manual, Grants for Research and Education in Science and Engineering (GRESE), and the Proposal and Award Manual; oversight of all agency procurement activities through the functions of the Procurement Executive and the Competition Advocate; and representing NSF with other Federal agencies and external organizations in matters relating to grant, contract and research administration activities.

2. Office of Information and Resource Management (IRM)

a. *Director, Office of Information and Resource Management.* The Director, IRM, serves as the principal advisor to the Director, NSF, on all administrative and general management activities of the National Science Foundation. This responsibility encompasses: information systems, human resource management and employee-oriented programs, health services, management analysis, and general administrative and logistic support functions.

b. *Division of Administrative Services (DAS).* DAS is responsible for the management and direction of official travel services and conference arrangements; procurement, issuance and maintenance of supplies, materials, and equipment; space management; telecommunications and building maintenance; records disposition; mail and messenger services; property accountability; warehouse management; document and building security; printing, typesetting, graphics, reproduction and binding services; information management and dissemination; publications distribution and storage; and the NSF Library and NSF Information Center, which is the official agency Reading Room.

c. *Division of Human Resource Management (HRM).* HRM is responsible for planning, developing, and implementing the human resource management program of the Foundation to provide for the effective acquisition, retention, motivation, development, and use of NSF personnel. The Division is also responsible for the Committee Management Program.

d. *Division of Information Systems (DIS).* DIS is responsible for development, operation, maintenance, and oversight of automated systems that provide management information and support program and administrative staff activities throughout the Foundation's business cycle.

3. Directorate for Biological Sciences (BIO)

a. *Assistant Director for Biological Sciences.* The Assistant Director serves as principal advisor to the Director in the development of long-range plans, annual programs, and research policy in the biological sciences as established by statute and the National Science Board authority. The Assistant Director is also responsible for developing and implementing programs to strengthen scientific research potential in these sciences. The Directorate, composed of four divisions reporting to the Assistant Director, is structured primarily on a disciplinary basis. Each division, headed by a Division Director, is subdivided into programs. In addition to supporting research projects, divisions may support dissertations, research conferences and workshops, meetings, and the organization or development of specialized research facilities and equipment.

b. *Division of Biological Instrumentation and Resources (BIR).* BIR was established in response to the need for a coordinated activity of infrastructure and research resource programs. The Division is responsible for both internal and external infrastructure activities, including support for instrumentation and instrument development, biological facilities centers, and other biology facility programs, and also includes the coordination of all cross-directorate programs, maintenance and improvement of all BIO ADP systems and information management, as well as training for automated systems.

c. *Division of Environmental Biology (DEB).* DEB supports research on systematics and on biological systems above the level of organisms as well as the interaction of organisms with the environment. This encompasses areas such as population genetics, evolutionary processes and patterns, biological surveys and inventories, chemical ecology, microbial ecology, organism-to-organism interactions, mathematical modeling of ecological systems, nutrient dynamics, and long-term studies in environmental biology. The Division especially seeks to introduce state-of-the-art technology to address complex ecological questions.

d. *Division of Integrative Biology and Neuroscience (IBN).* IBN is responsible for supporting research on biological systems above the cell level in order to advance understanding of the development and functioning of

organisms. This includes support of research on developmental mechanisms, integrative plant biology (e.g., plant metabolism, physiology, and plant-microbe interactions), animal behavior and ecology, and neuroscience.

e. *Division of Molecular and Cellular Biosciences (MCB).* MCB is responsible for supporting research in the fields of molecular and cellular biology. This includes support in areas such as macromolecular structure and function and synthesis, genome structure and function and regulation of gene expression, cellular and organelle structure, function and biogenesis, cellular communication and regulation, and microbial biology. The Division supports a limited number of postdoctoral research fellowships in plant biology at the molecular, cellular, and whole plant levels.

4. Directorate for Computer and Information Science and Engineering (CISE)

a. *Assistant Director for Computer and Information Science and Engineering.* The Assistant Director serves as the principal advisor to the Director, within the framework of statutory and NSB authority, in computer and information sciences and engineering. Development and implementation of research and facilities support policies, annual programs and budgets, long-range plans, and the establishment of research priorities to further national goals and strengthen the scientific research potential are responsibilities of the Assistant Director. One office and five divisions, each dealing with a substantive area, report to the Assistant Director. In addition to the specific areas, support is provided for appropriate conferences, symposia, and research workshops in the areas for which it has responsibility.

b. *Office of Cross-Disciplinary Activities (CDA).* CDA is responsible for centralizing intra-divisional activities such as those relating to infrastructure building; for providing a central focus for activities between CISE and industry, other governmental agencies, professional societies, and international organizations; and for proposing and initiating new cross-divisional programs. The Office manages and coordinates cross-divisional targeted activities and programs including Science and Technology Centers, NSF Young Investigator Awards, Research Initiation in Computer and Information Science and Engineering, Research Experiences for Undergraduates, Minority Research Initiation, Research Opportunities for Women, Ethics and Values Studies, and the like.

c. *Division of Advanced Scientific Computing (ASC).* ASC provides researchers access to advanced computational facilities located at several centers, provides a variety of services and training opportunities to new users, supports research on new algorithms, peripheral devices, and innovative supercomputing systems. The Centers program is devoted to delivering needed advanced computational services to the academic research community and to maintaining and improving supercomputer performance at the facilities. The New Technologies program is responsible for research and development and implementation of novel systems for increasing the future power and expanding the horizon of computational capabilities for frontier scientific and engineering research.

d. *Division of Computer and Computation Research (CCR).* CCR is responsible for research in several broad areas including theories of computation, numerical, symbolic and algebraic computation, computer and software systems architectures, graphics, operating systems, programming languages, program semantics, theorem proving and other aspects of software systems science and software engineering. The Division also provides experimental facilities for research in computer and information science and engineering, and special-purpose equipment for research.

e. *Division of Information, Robotics and Intelligent Systems (IRIS).* IRIS is responsible for research on the representation and utilization of knowledge, database design and implementation, robotics and machine intelligence, perception and cognition, machine-human interface design, and social science and engineering research fundamental to understanding the social and economic consequences of the wide use of information technologies. It also provides for experimenting with real time systems.

f. *Division of Microelectronic Information Processing Systems (MIPS).* MIPS is responsible for research on the design, fabrication and testing of microelectronic integrated systems. This encompasses VLSI architecture, simulation, circuit theory and signal processing; and the development and testing of prototypes of novel computer and information processing systems. It also provides access, for research and education purposes, to a fast turnaround service for implementing microelectronic components, circuits and systems.

g. *Division of Networking and Communications Research and Infrastructure (NCRI).* NCRI has both a research-support and an infrastructural role. The Division is responsible for NSF's Networking and Communications Research program which emphasizes topics such as information theory, coding and coded modulation, and storage channels; network management and control, protocol design, and interface architectures; internetworking, network security, and fundamental limits of networks. In addition, the Division supports NSFNET, a computer network for the nation's research and education community that currently interconnects several thousand U.S. educational institutions, government facilities and laboratories, and industrial firms. As part of the President's High Performance Computing and Communications program, NCRI also fulfills NSF's role in coordinating the broad deployment of the Interagency Interim National Research and Education Network.

5. Directorate for Education and Human Resources (EHR)

a. *Assistant Director for Education and Human Resources.* The Assistant Director is responsible for the initiation of and support for programs to strengthen U.S. science and engineering education and related activities at all levels and to maintain the vitality of such efforts. This responsibility includes improving science and mathematics education opportunities for all students and addressing the long-term development of a strong human resource base to meet the needs of science and technology. The Directorate has five major long-range goals: (1) To help ensure that a high-quality precollege education in science is available to every child in the United States, thereby enabling those who are interested and talented to pursue technical careers; (2) to help ensure the best possible professional education in science and engineering; (3) to help ensure that college-level opportunities are available to broaden the science backgrounds of nonspecialists; (4) to support informal science education programs for the public; and (5) to assist in the development of science and engineering research and education capability throughout the nation.

b. *Office of Systemic Reform (OSR).* OSR supports a small number of reform efforts aimed at enhancing science, engineering and mathematics research and education activities in states and other geographic regions.

c. *Division of Elementary, Secondary and Informal Science Education (ESIE).*

ESIE provides a cohesive and comprehensive set of education and human resources activities designed to improve K–12 science, mathematics, and technology education. These activities are developed to enhance the education of all students and of teachers, to stimulate and support their interests in mathematics and science, to strengthen the educational foundations for those students who are attracted to science, mathematics, or engineering careers, and to inform the general public about these fields.

d. *Division of Graduate Education and Research Development (GERD).* GERD promotes the early career development of scientists and engineers, and thereby helps to assure a steady flow of high-ability students through the educational and research training systems of the nation. This objective is addressed through the use of fellowship and traineeship mechanisms, as well as through programs aimed at advancing the careers of women in science and engineering.

e. *Division of Human Resource Development (HRD).* HRD addresses the issue of increasing the participation of minorities, women, and persons with disabilities in science, mathematics, and engineering careers. Its goal is to increase the representation of minorities in science and engineering at all educational levels; strengthen the research and training capabilities of academic institutions with significant minority enrollments; and develop strategies for increasing the number of women and persons with disabilities participating in science and engineering.

f. *Division of Research, Evaluation, and Dissemination (RED).* RED provides research, data, and analyses to the Directorate for program monitoring, evaluation, and management, and for use in formulating policy options for providing national leadership in the reform of science, engineering, and mathematics education.

g. *Division of Undergraduate Education (DUE).* DUE is responsible for contributing to the improvement of science, mathematics, and engineering education in the Nation's colleges and universities. Its goal is to provide leadership and support for the health of the U.S. undergraduate education enterprise through programs developed to improve curriculum and laboratory offerings; upgrade instructional science equipment; enhance college and university teaching; and improve undergraduate professional preparation of future elementary and secondary school teachers of science and mathematics.

6. Directorate for Engineering (ENG)

a. *Assistant Director for Engineering.* The Assistant Director participates with the Director in planning, analyzing, and evaluating activities and in establishing and maintaining an effective liaison with the Congress, other Federal agencies, the educational and scientific communities, professional societies, and other interested parties. The overall mission of NSF's Engineering (ENG) Directorate is to promote the progress of engineering and technology, thereby contributing to national prosperity and security. Specifically, ENG seeks to strengthen the engineering science base, which provides the foundation for engineering education, research, technological innovation and practice; to develop a knowledge base for technology-driven areas such as design and manufacturing; to encourage technological innovation through the support of research in emerging areas; to promote the cross-disciplinary research approach through the support of research groups and centers; to improve the quality of engineering education in order to attract the most capable students to the engineering profession and produce first-rate engineers; and to provide additional opportunities for minorities, women, and the disabled through programs to remove barriers and provide incentives for full participation in education and research.

b. *Division of Biological and Critical Systems (BCS).* BCS is composed of three sections: Bioengineering, Environmental and Ocean Systems, and Hazard Mitigation Research. Bioengineering concerns the application of engineering methods to problems in the life and health sciences and the development of new engineering technologies through knowledge of the living system. Environmental and Ocean Systems focuses on the contaminant interactions that threaten the quality of land, water, and air and research into the use of coastal ocean space, advanced sensing and measurement techniques, structures, and vehicles. Hazard Mitigation Research targets Earthquake Hazard Mitigation and Natural and Man-Made Hazard Mitigation. In addition to research into engineering, planning, and societal aspects of earthquake hazard reduction, support is provided for engineering research to reduce the social impacts of such phenomena as strong winds, landslides, expansive soils, floods, and drought.

c. *Division of Chemical and Thermal Systems (CTS).* CTS funds research that strengthens the engineering base for technologies involving chemical, thermal and flow processes. The processes are important in areas like microelectronics, specialty chemicals, pharmaceuticals, energy production and transfer, molecular engineering of advanced materials, and chemical processing of hazardous waste.

d. *Division of Design and Manufacturing Systems (DDM).* DDM seeks to develop and expand the scientific foundations of design, manufacturing and computer-integrated engineering across a broad spectrum of American industry. This long-term effort is needed: to deepen our understanding of the processes, operations and systems that comprise our manufacturing base; to render this base more competitive; and to make it responsive to new needs and receptive to innovation. Complementing this effort is support of the development of operations research methodologies that underlie the full range of engineering production systems.

e. *Division of Electrical and Communications Systems (ECS).* ECS supports fundamental engineering research on the conceptualization, analysis, design, and fabrication of materials, devices, systems, and phenomena that involve electrical, electronic, electromechanical or optical technologies. The Division also provides funding for the development of analytical methods and computational algorithms for technology utilization that supports the full range of engineering disciplines. Through the Emerging Technology Initiation program, the Division also supports selected, innovation engineering technologies that cut across traditional disciplinary boundaries. The goal of the ECS Division is to enhance the knowledge base and academic infrastructure in relevant research areas, which contribute to the development, manufacture, and deployment of engineering products and systems that benefit the nation's economy, national security, and overall societal welfare.

f. *Division of Engineering Education and Centers (EEC).* EEC supports research aimed at enhancing our country's economic well-being and industrial competitiveness through new paradigms to improve the quality of engineering education and research. EEC seeks to yield well-educated, professionally oriented engineers who are internationally competitive and able to assume broad leadership roles in industry and academe specifically and in society generally.

Additionally the EEC subactivity supports university-based research centers across a spectrum of technologies essential to U.S. economic competitiveness. The Engineering

Research Centers Program addresses fundamental research issues, educates engineering students using a cross-disciplinary team approach, and provides for the long-term involvement of industry in planning, research, and education.

g. *Division of Industrial Innovation Interface (III).* III provides a focus for small business activities of the National Science Foundation. Opportunities are provided under the Small Business Innovation Research Program for small science and technology-based firms to perform research projects leading to more rapid commercialization of new ideas, products, and processes. In addition, the Division supports the management of the Technological Innovation Program, an interdisciplinary program, aimed at managing the innovation process and improving the speed and efficiency of bringing research results to the market.

h. *Division of Mechanical and Structural Systems (MSS).* MSS seeks to improve and expand fundamental engineering knowledge in the broad areas of mechanics, structures, and materials engineering. Research is supported that will improve existing industrial processes and create new technology in areas such as the formulation and processing of novel engineering materials, the performance and service life of machines and equipment, and more efficient construction techniques for large scale structures.

7. Directorate for Geosciences (GEO)

a. *Assistant Director for Geosciences.* The Assistant Director is the principal advisor to the Director in the development and implementation of research, facilities, and instrumentation support policies; annual programs and budgets; long-range plans and the establishment of research priorities to further national scientific goals, strengthen the scientific potential of global geosciences, and enhance the basic programs in atmospheric, earth, and ocean sciences within the framework of statutory and National Science Board authority. The Geosciences Directorate is composed of three divisions that report to the Assistant Director. The divisions are structured primarily along disciplinary and functional lines. Each division is managed by a Division Director and is subdivided into sections and programs as required for appropriate management and oversight. In addition to the specific areas of research, facilities, and instrumentation support described below, the divisions maintain close liaison with mission-oriented Federal agencies that support similar or complementary areas of research and provide NSF representation on standing interagency committees and joint advisory and planning groups.

b. *Division of Atmospheric Sciences (ATM).* The objective of ATM is to improve fundamental knowledge of the behavior of the earth's atmosphere. The Division provides support for basic research on the physics and chemistry of the earth's atmosphere and its response to solar and terrestrial influences including those of the hydrosphere and biosphere. This research is relevant to national needs of improved prediction and understanding of weather, climate, and the global environmental system. It also provides basic knowledge that can be used to support applications by mission-oriented agencies. The Division supports the National Center for Atmospheric Research (NCAR), our country's major research center in atmospheric sciences. NCAR is engaged in large-scale atmospheric research projects including those requiring the use of aircraft, specialized instruments, powerful computers, and data archival systems. NCAR's state-of-the-art facilities are utilized by universities and Federal agencies such as the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and the Federal Aviation Administration. Support also is provided for upper atmospheric research facilities comprising four large incoherent-scatter radar systems in a longitudinal chain from Greenland to Peru that permit scientists to investigate the local and global upper atmosphere

c. *Division of Earth Sciences (EAR).* The objective of EAR is to increase understanding of the solid earth—its composition and structure, its historical evolution, and the dynamic processes, both internal and external, which formed and continue to modify its features. The Division supports basic research across the broad nature of geoscience disciplines including: research on the fundamental nature of earthquakes; research on hydrothermal and magmatic systems and their relationship to mineral deposits; research on earth history as reflected by rock stratigraphy, the fossil record, and other evidence of both cataclysmic and gradual events; research on the structures and properties of rocks and minerals at the pressures and temperatures existing within the earth; research on volcanoes and their historical patterns of eruption; and research on surface and ground water physical and chemical processes in hydrology. The Division seeks to provide earth scientists in U.S. universities and colleges with essential research instrumentation and provides support for the development of new kinds of instruments or the adaptation of existing instruments for new uses in the geosciences. The Division also supports medium to large scale projects designed to bring important new tools and approaches into the hands of university-based earth scientists that offer an opportunity to improve dramatically our understanding of the continental lithosphere through the major advances brought about by the application of plate tectonic theory to the study of the continental crust and lithosphere.

d. *Division of Ocean Sciences (OCE).* OCE supports research to improve understanding of the ocean, the ocean floor, and their relationships to human activities. The Division's research programs foster exploration in all aspects of ocean sciences to improve our understanding of the complex interactions of physical, chemical, geological, and biological processes in the ocean and at its boundaries. The Division also supports operations of ships and specialized facilities and equipment needed by U.S. oceanographers to conduct research; and supports U.S. scientists participating in the ocean drilling program and manages the drilling program as an international enterprise, thereby ensuring the financial and scientific participation of scientists from partner nations in jointly sponsored scientific and operational activities.

8. Directorate for Mathematical and Physical Sciences (MPS)

a. *Assistant Director for Mathematical and Physical Sciences.* The Assistant Director serves as an advisor to the Director in the development of long-range plans, annual programs, and research policy in the areas of mathematical and physical sciences, as established under statutory and National Science Board authority; and is responsible for developing and carrying out a program to accomplish the Foundation's research support mission in these areas. Five divisions report to the Assistant Director for Mathematical and Physical Sciences. Each division is headed by a Division Director and generally is subdivided on a disciplinary or functional basis into sections and/or programs. In addition to the specific areas of support discussed below, each division supports appropriate conferences, symposia, and research workshops in the areas of science for which it has responsibility.

b. *Division of Astronomical Sciences (AST).* AST seeks to increase our understanding of the physical nature of the universe, particularly that of the solar system, individual stars, star clusters, galaxies, and special objects in space such as molecular clouds and quasars. Through its astronomy project support programs, the Division supports researchers in all areas of ground-based astronomy, including research on the sun, the solar system, the structure and evolution of the stars, stellar distances and motions, the composition and distribution of interstellar gas and dust, and galaxies and quasars. Also, support is provided for research programs of several major university observatories and for the development and acquisition of new instrumentation incorporating the latest technology for the detection and analysis of radiation through the electromagnetic spectrum. In addition, the Division provides developmental and operational support for three National Astronomy Centers, operated and managed by nonprofit organizations or universities, under contract to NSF. The Centers provide a variety of optical, infrared, radio and other specialized instrumentation, on a competitive basis, to scientists throughout the Nation. Scientific and support staff are maintained at the Centers to support the research programs of visiting scientists, to develop advanced instrumentation, and to participate in national research programs.

c. *Division of Chemistry (CHEM).* CHEM is responsible for the support of fundamental research in all areas of chemistry, to improve understanding and make possible new applications of chemistry beneficial to other sciences, engineering and technology. The broad subfields supported are organic and macromolecular chemistry, physical chemistry, analytical and surface chemistry, and inorganic, bioinorganic and organometallic chemistry. Special programs exist to assist departments and individual investigators in acquiring advanced instrumentation critical to modern chemical inquiry, and to support interdisciplinary research areas such as the chemistry of life processes and materials chemistry.

d. *Division of Materials Research (DMR).* DMR is responsible for the support of multidisciplinary research designed to gain a deeper understanding of the properties of materials in terms of their composition, structure and processing history and the interactions between their constituents. The broad subfields supported are condensed matter physics; metals, ceramics, and electronics; national facilities and instrumentation; materials theory; and materials research laboratories and groups. DMR also has responsibility for the Office of Special Programs in Materials which administers the Science and Technology Centers, cross-directorate programs, education and human resource activities, and FCCSET initiatives.

e. *Division of Mathematical Sciences (DMS).* DMS is responsible for providing research support in mathematics and statistics, and in their applications to other sciences. The Division has special programs to support conferences, to provide support for postdoctoral fellows, and to assist groups of researchers in acquiring computational equipment. In addition the Division is interested in supporting interdisciplinary groups of researchers developing computational algorithms to be used in studying problems in science and engineering.

f. *Division of Physics (PHY).* PHY is responsible for development of new knowledge about the existence, structure, and interactions of the various forms of matter and energy, and about the basic forces that govern these interactions. The ultimate goal is to understand and predict the effects of nature on a scale ranging from the microscopic to the cosmic. The Division supports research to advance knowledge in the areas of elementary particle physics; nuclear physics; atomic, molecular, and optical physics; and gravitational physics. Both experimental and theoretical studies are required to produce fuller understanding in each of the areas of interest. The research supported is balanced with respect to the scientific areas as well as to the types of research thrusts for certain fields or for major new projects. Examples include development of new techniques and instrumentation; university-based accelerator laboratories, some of which provide centralized facilities for outside user groups; university-based research groups performing experiments at their own laboratories or at centralized facilities; and theoretical interpretation, exploration, and prediction.

9. Directorate for Social, Behavioral and Economic Sciences (SBE)

a. *Assistant Director for Social, Behavioral and Economic Sciences.* The Assistant Director serves as principal advisor to the Director in the development of long-range plans, annual programs, and research policy in the social, behavioral and economic sciences as established by statute and the National Science Board authority. The Assistant Director is also responsible for developing and implementing programs to strengthen scientific research potential in these sciences. The Directorate, composed of three divisions reporting to the Assistant Director, is structured primarily on a disciplinary basis. Each division, headed by a Division Director, is subdivided into disciplinary programs. In addition to supporting research projects, divisions may support dissertations, data collection and analyses, research conferences and workshops, meetings, and the organization or development of specialized research facilities and equipment. The Directorate also supports research on history and philosophy of science and ethics and values in science.

b. *Division of International Programs (INT).* INT administers programs for international cooperative scientific activities, including joint research projects, seminars, and scientific visits. It facilitates U.S. scientists' access to unique facilities and sites abroad and provides support for Joint Commissions and other U.S. international scientific efforts. INT also supports U.S. participation in selected multilateral scientific organizations and coordinates other National Science Foundation programs with international aspects.

c. *Division of Science Resources Studies (SRS).* SRS is responsible for development and maintenance of a data base dealing with the characteristics, magnitude, and utilization of the Nation's human and financial resources for science and technology (S&T) activities. Studies and analyses provide information on scientific, engineering, and technical personnel, science education, scientific institutions, the funding of S&T activities, the nature and relationship of different types of research and development (R&D) activities, the economic impact of R&D, and related topics. The Division also supports studies designed to develop new or improved techniques for analyzing S&T resources data and new or improved indicators of the inputs, outputs, and impacts of S&T activities.

d. *Division of Social, Behavioral, and Economic Research (SBER).* SBER seeks to develop basic scientific knowledge of human behavior, interaction, and decision making, as well as social and economic systems, organizations, and institutions. Research support is provided in the fields of anthropology, archaeology, cognitive science, decision and management sciences, economics, geography, political science, psychology, sociology, and related areas. The Division also provides support for measurement and methodological work, improvement of

the quality and accessibility of social and economic data resources, and the preservation and accessibility of systematic anthropological collections.

V. Information for Guidance to the Public

A. General

1. *Inquiries and Transaction of Business.* All inquiries, submittals, or requests should be addressed to the National Science Foundation, Washington, DC 20550. Members of the public may visit Foundation offices at 1800 G Street, NW., Washington, DC. during business hours, 8:30 a.m. to 5 p.m., Monday through Friday. The Division of Human Resource Management has a Telephonic Device for the Deaf (TDD) which assists individuals with hearing impairment in obtaining information about NSF programs or employment. The TDD is available Monday through Friday on (202) 357–7492. The information provided below indicates the offices members of the public should contact for specific information.

Individuals uncertain about which office to contact may write to the Foundation's mailing address or visit the National Science Foundation, Information Center, Room 232, or the Public Affairs office, room 527, Washington, DC 20550.

2. *Availability of Information.* Persons desiring to obtain information, including documents, may submit a request by telephone or in writing to the Public Affairs office (202) 357–9498, the NSF Information Center (202) 357–1110, or other Foundation units or, where applicable, in writing under terms of the NSF Freedom of Information Act regulations, 45 CFR part 612, or the NSF Privacy Act regulations, 45 CFR part 613. All documents will be made available, except for those which fall within the exemptions specified in the law.

- Freedom of Information Act (FOIA) requests from the public for Agency records should be clearly identified as "FOIA REQUEST" and addressed to FOIA Officer, Office of Legislative and Public Affairs, National Science Foundation, 1800 G Street, NW., room 527, Washington, DC 20550.
- Privacy Act inquiries allow anyone to obtain personal records legally available under the Privacy Act of 1974. Individuals may submit a request to the NSF Privacy Act Officer, 1800 G Street, NW., room 501, Washington, DC 20550.

B. *Pertinent Publications.* The Foundation and the National Science Board publish a variety of booklets and other materials describing the programs and procedures of the Foundation and assessing the status of science in the Nation. Unless otherwise indicated, all publications and forms may be obtained by calling (202) 357–7861, by faxing requests to 703–644–4278, or by writing: National Science Foundation, Attn: Forms and Publications, 1800 G Street, NW., room 233A, Washington, DC 20550.

The booklet, Publications of the National Science Foundation (NSF 92–73), provides a listing of NSF publications available to the public, with prices where they apply. The following are key publications of the Foundation.

1. *About the NSF* (NSF 91–38) is a flyer for the general public that briefly describes NSF programs and activities.

2. *Grants for Research and Education in Science and Engineering* (NSF 92–89) provides basic guidelines and instructions for investigators applying to the Foundation for scientific and engineering research project support and for other closely related programs, such as the support of foreign travel, conferences, symposia, and specialized research equipment and facilities. Complete details are given on application procedures. The brochure also provides information on the merit review of proposals for support.

3. *NSF Grant Policy Manual* (NSF 88–47, as revised) is a compendium of basic NSF grant administration policies and procedures generally applicable to most types of NSF grants and to most categories of recipients. The Manual includes fiscal regulations regarding expenditure reporting and use of NSF granted funds and other specific administrative procedures and policies, This Manual is updated periodically and is available only by subscription from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402–9371. These subscription rules and prices are subject to change by GPO.

4. *Guide to Programs* (NSF 92–78) contains general information for individuals interested in participating in NSF support programs. Program listings describe the principal characteristics and basic purpose of each activity, as well as eligibility requirements, closing dates (where applicable), and the address to obtain more information, brochures, or application forms.

5. *NSF Bulletin* is a monthly publication (except July and August) that summarizes program announcements, deadlines and target dates for proposal submissions, and other NSF activities.

6. *Program Announcements and Solicitations* provide detailed information about the Foundation's programs. Specifically, they describe th areas of research funded by individual Programs and provide guidelines for the preparation and submission of research proposals. They also contain descriptions of various Program publications.

7. *NSF Annual Report* (NSF 92–1) is an annual presentation to the President, for submission to the Congress, highlighting the activities of the Foundation for the prior fiscal year. The report reflects accomplishments in research support activities and in science and engineering education, along with recent NSF policy or program initiatives and trends. Appendices contain other data on Foundation staff and National Science Board members and patents and financial reports. The report covering activities of the previous fiscal year is available mid-year.

8. *National Science Board Reports* contain assessments of the status and health of science and engineering. A report on indicators of the state of science and engineering in the United States is rendered biennially to the President for submission to the Congress. Other reports on policy matters related to science and engineering and education in science and engineering are provided from time to time.

9. *Antarctic Journal of the United States*, a quarterly magazine, and the Annual Review issue of the Antarctic Journal are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

10. *Important Notices* are the primary means of general communication by the Director, NSF, with organizations receiving or eligible for NSF support. These notices convey important announcements of NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences.

11. *Internal Issuances* are the Foundation's system for communication within the Agency on matters of policy, procedures, and general information. The internal issuances are published to establish organizations, define missions, set objectives, assign responsibilities, delegate or limit authorities, establish program guidelines, delineate basic requirements affecting activities of the Foundation, and serve other internal needs.

C. *Sources for Specific Subjects.* For information concerning the following topics, contact the offices listed below.

1. *Contracts.* The Foundation publicizes contracting and subcontracting opportunities in the *Commerce Business Daily* and other appropriate publications. Organizations seeking to undertake contract work for the Foundation may contact the Division of Grants and Contracts, (202) 357–0469, room 1140, or the Division of Administrative Services, (202) 357–7922, room 248, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

2. *Small Business.* Information concerning NSF research and procurement opportunities for small, disadvantaged, or women-owned businesses may be obtained from the Office of Small Business Research and Development/Office of Small and Disadvantaged Business Utilization, (202) 653–5335, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

3. *Engineering Information Resources.* Information concerning engineering resources may be obtained from the Office of the Assistant Director for Engineering, National Science Foundation, 1800 G Street NW., room 525, Washington, DC 20550.

4. *National Science Board Activities.* Schedules of Board meetings, agendas, and summary minutes of the open meetings of the Board may be obtained from the NSB Office, (202) 357–9582, National Science Foundation, 1800 G Street NW., room 545, Washington, DC 20550.

5. *NSF Advisory Committee Activities.* Summary of meeting minutes may be obtained from the contacts listed in the Notice of Meetings published in the **Federal Register**. General information about the Foundation's advisory groups may be obtained from the Committee Management Officer, Division of Human Resource Management, National Science Foundation, 1800 G Street NW., room 208, Washington, DC 20550, (202) 357–7363.

6. *Employment.* Inquiries may be directed to the National Science Foundation, Division of Human Resource Management, (202) 357–7840, 1800 G Street NW., room 208, Washington, DC 20550. The NSF Job Information Hotline can be accessed 24 hours a day in the Washington, DC metropolitan area by dialing (202) 357–7735; outside Washington, DC, dial 1–800–628–1487. Hearing impaired individuals can call Monday–Friday to access a Telephonic Device for the Deaf (TDD). The TDD number is (202) 357–7492. The National Science Foundation is an equal opportunity employer.

D. Other Access to Information

1. *Reading Room.* Records are available for public inspection and copying in the NSF Information Center, National Science Foundation, 1800 G Street, NW., room 232, Washington, DC 20550. Telephone (202) 357–9000.

2. *Science and Technology Information System (STIS).* NSF has an electronic dissemination system that provides easy access to NSF publications and other information. The full text of publications can be searched online and copied from the system. There is no charge for connect time and no need to register for a password. The service is available 24 hours a day, except for maintenance periods. Up to 10 people can be on the system simultaneously. For more information and instructions to use STIS, request "STIS—The Science and Technology Information System" (flyer), NSF 91–10, or the "STIS—User Manual," NSF 91–19. Information can also be obtained by calling (202) 357–7861 or writing: National Science Foundation, Attn: Forms and Publications, 1800 G Street, NW., room 233A, Washington, DC 20550.

[FR Doc. 93–2933 Filed 2–5–93; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Notification of Upcoming Meetings in the High-Level Waste Pre-Licensing Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Weekly notification of upcoming meetings in the high-level waste pre-licensing program to become bi-weekly notification.

SUMMARY: On August 27, 1984, the Nuclear Regulatory Commission published a **Federal Register** Notice (49 FR 33946) regarding the sending out of a weekly notice of upcoming meetings in the high-level waste pre-licensing program. In keeping with the Agency's Task Force on Paper Reduction and the Reduction in Paper Act of 1980, this mailing will now be sent on a bi-weekly basis.

FOR FURTHER INFORMATION CONTACT: Anne Garcia, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–2438.

Dated at Rockville, Maryland this 29th day of January, 1993.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–2919 Filed 2–5–93; 8:45 am]

BILLING CODE 7590–01–M

Issuance of Partial Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRR), has issued a Partial Director's Decision concerning a petition dated July 21, 1992, supplemented by an addendum dated August 12, 1992, and an "appeal" request dated September 3, 1992, filed by the Nuclear Information and Resource Service, et al. (Petitioners). The Petitioners requested NRC enforcement action against Gulf States Utilities' (GSU) River Bend Station, demanding that the operating license be suspended until the licensee can demonstrate, through independent testing, that it meets NRC's fire protection regulations (appendix R to 10 CFR part 50). In addition, the Petitioners demanded that the NRC staff immediately issue Generic Letter (GL) 92-XX, draft issued February 11, 1992, and close any nuclear power plant for which the licensee cannot prove, through independent testing, that it meets fire protection regulations until it does meet them. The addendum of August 12, 1992, requested immediate action related to the Comanche Peak Unit 1, Shearon Harris, Fermi-2, Ginna, WNP-2, and Robinson nuclear facilities, and requested the suspension of the construction permit for Comanche Peak Unit 2. The Petitioners' "appeal" dated September 3, 1992, of the initial staff denial of the requested relief removed Ginna and Robinson from the Petitioners' request for enforcement action and added Brunswick Units 1 and 2.

By letter dated August 19, 1992, the Petitioners were informed that the request for emergency relief was denied and appropriate action would be taken on the specific issues they raised. By letter dated November 9, 1992, the Petitioners were further informed by the Secretary of the Commission that the "appeal" had been referred to the Director, NRR, for appropriate consideration in conjunction with review of the issues raised in the petition and addendum.

The petition, addendum and "appeal" were considered under the provisions of

10 CFR 2.206 of the NRC's regulations. Notice of receipt of the petition dated July 21, 1992, and addendum dated August 12, 1992, was published in the **Federal Register** on August 26, 1992 (57 FR 38702).

The Petitioners alleged a number of deficiencies concerning Thermo-Lag material including failure of Thermo-Lag fire barrier during 1-hour and 3-hour fire endurance tests, deficiencies in procedures for installation, nonconformance with NRC regulations, the combustibility of the material, ampacity miscalculations, the lack of seismic tests, the failure to pass hose stream tests, the high toxicity of substances emitted from the ignited material, and the declaration by at least one utility (GSU) of the material as inoperable at its River Bend Station. The Petitioners also alleged that a fire watch cannot substitute for an effective fire barrier indefinitely and that the NRC staff has not adequately analyzed the use of fire watches.

On December 17, 1992, the NRC staff issued Genric Letter 92–08, "Thermo-Lag 330–1 Fire Barriers." To the extent that Petitioners sought issuance of Generic Letter 92-XX, this relief is granted.

The Director has determined that the Petitioners' remaining requests should be denied for the reasons set forth in the "Partial Director's Decision Pursuant to 10 CFR 2.206" (DD–93–03), which is available for inspection and copying in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Rooms for Comanche Peak, Shearon Harris, Fermi-2, Brunswick, River Bend, and WNP-2.

On December 15, 1992, the Nuclear Information and Resource Service (NIRS) filed another Petition pursuant to 10 CFR 2.206 raising additional issues regarding Thermo-Lag fire barrier material. The December 15, 1992 NIRS Petition will be considered as a supplement to the Petition submitted by NIRS and others on July 21, 1992. The issues raised in the December 15, 1992 submittal will be addressed in a Final Director's Decision to be issued within a reasonable time.

A copy of the Decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). The Decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 1st day of February 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2918 Filed 2–5–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–333, License No. DPR–59 EA 92–033]

New York Power Authority, FitzPatrick Nuclear Power Plant, Scriba, New York; Order Imposing Civil Monetary Penalties

I

The New York Power Authority (Licensee), previously named the Power Authority of the State of New York at the time of issuance of the license on October 17, 1974, is the holder of License No. DPR–59 issued by the Nuclear Regulatory Commission (NRC). The license authorizes the Licensee to operate the FitzPatrick nuclear power plant in Scriba, New York, in accordance with the conditions specified therein.

II

Inspections of the Licensee's activities were conducted at the facility between December 2, 1991, and May 1, 1992. The results of these inspections indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated September 15, 1992. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations. The Licensee responded to the Notice on October 15, 1992. In its response, the Licensee admitted the violations, but requested full mitigation for the civil penalties for the reasons stated in the Appendix.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the Licensee has not provided an adequate basis for full mitigation of the proposed penalties. However, the NRC staff has decided, for the reasons given in the Appendix, to exercise broad discretion and partially mitigate the proposed penalties.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay civil penalties in the amount of $300,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether on the basis of the violations admitted by the licensee, this Order should be sustained.

Dated at Rockville, Maryland this 29th day of January 1993.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

Appendix—Evaluations and Conclusions

On September 15, 1992, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violation identified during NRC inspections. New York Power Authority (Licensee) responded to the Notice on October 15, 1992. In its response, the licensee admitted the violations, but contended that full mitigation of the civil penalties is warranted. The NRC's evaluation and conclusion regarding the licensee's request are as follows:

1. Summary of Licensee's Response Requesting Mitigation of the Civil Penalties

In its response, the licensee stated that the NRC Enforcement Policy (10 CFR part 2, Appendix C) notes that the NRC may exercise discretion to reduce the amount of a proposed civil penalty, notwithstanding the outcome of the normal assessment process, to ensure that the penalty reflects the NRC's concern and conveys the appropriate message. While the licensee did not deny the actual violations and also acknowledged that the NRC exercised such discretion in limiting the civil penalty for each of the five violations or problems, the licensee contended that the actual collective regulatory impact of the proposed penalties is still disproportionate to the current situation at FitzPatrick. In support of its contention, the licensee stated that (1) the violations resulted from, and were symptomatic of, the same underlying causes of an overall performance decline at FitzPatrick; (2) the licensee has undertaken comprehensive measures to address that past decline, the root causes, and contributing factors, including development and implementation of a comprehensive program to correct the root causes of the performance decline; and (3) the licensee believes that enforcement action designed to send a message at this late date is neither timely, necessary, nor warranted, noting that the related costs and other actions by the NRC have already sent a clear message to the Licensee and the industry, and imposition of the penalty would not convey any additional message and would only have a punitive effect upon the licensee.

The licensee further noted that it had already paid a substantial price for the decline in performance, stating that FitzPatrick (1) voluntarily shut down the facility for nearly a year to improve operations and address specific concerns, such as those related to fire protection, and this shutdown and the resulting improvement plan have resulted in significant costs to the Licensee; (2) was included on the NRC Watch List, resulting in increased NRC scrutiny, adverse public perception, and a shift in licensee resources to FitzPatrick improvement programs; and (3) was the subject of senior management changes to improve management control of plant operations, including a new site management team and organizational structure at the Resident Manager, General Manager, Technical Services Superintendent, and Headquarters Fire Protection supervisory levels.

The licensee also maintained that specific enforcement discretion, pursuant to section VII.B(3) of the existing Enforcement Policy, was applicable to the fire protection and Appendix R violations, stating that they were identified during the extended shutdown. In support of that specific request, the licensee, stated that the shutdown was due in part to the licensee's identification of programmatic Appendix R and fire protection violations, which reflected the licensee's desire to implement a comprehensive program to correct these conditions, including a complete safe shutdown reanalysis and numerous plant modifications, the violations were not willful, and the licensee had agreed to correct these deficiencies prior to restart. The licensee also asserted that the appendix R/fire protection violations at FitzPatrick are similar to those noted at the Boston Edison Company's Pilgrim Nuclear Power Station (Reference: EA 88–263), where enforcement discretion was exercised for fire protection-related violations identified during an extended shut down, and no violation was cited. Therefore, the licensee claims that it had met all of the required criteria set forth in Section VII.B of the policy for the exercise of enforcement discretion, and such discretion would not be unprecedented, and contended that the proposed civil penalties for the fire protection and Appendix R violations should be fully mitigated.

Furthermore, the licensee also asserts that the civil penalty for the violation of 10 CFR 50.9 (providing inaccurate information to the NRC) should be mitigated because it was not willful, and the licensee is implementing measures to provide additional accuracy.

2. NRC Evaluation of Licensee's Response Requesting Mitigation of the Civil Penalties

The NRC has evaluated the licensee's response, and based upon that evaluation, concludes that partial mitigation of the proposed civil penalties is warranted. However, the NRC has determined that full mitigation of the $500,000 is not warranted.

The NRC acknowledges the licensee's general arguments that the underlying causes of the violations in the Notice were symptoms of the same overall performance decline that led to the shutdown at FitzPatrick. The NRC also recognizes that extensive corrective actions have been taken, and significant costs have been incurred as a result of the extended shutdown and related corrective actions. However, the NRC staff concluded in assessing the proposed civil penalty that a pervasive and longstanding decline in performance existed at the FitzPatrick facility, and that the New York Power Authority management did not act promptly to identify and correct this condition. Although the licensee's arguments for mitigation are partially persuasive, the NRC maintains that issuance of a significant enforcement action is warranted to (1) emphasize the need for the corrective actions taken or planned to be longlasting, and (2) to send a clear message to both this licensee, in particular, and the industry, in general, that in addition to the costs of corrective actions, licensees also face the additional costs of enforcement sanctions for significant safety violations or problems. As to the licensee's argument that this is not needed, the licensee did not heed the message to avoid performance problems following the extended shutdowns of other plants such as Peach Bottom, Nine Mile Point, Pilgrim and Calvert Cliffs. This penalty is issued to emphasize that while corrective action is important, it is also important for licensees to prevent significant performance problems from occurring. In addition, the NRC determined that full mitigation of the civil penalty amount was not warranted because of the number, nature, and egregiousness of the violations described in this action, and to further emphasize that conditions such as that which existed at FitzPatrick cannot and will not be tolerated by the NRC.

The NRC also recognizes the licensee's specific arguments for mitigation of the penalties associated with the fire protection and Appendix R requirements. With respect to the fire protection program deficiencies (which included the fire brigade training, as well as the failure to correct promptly the deficiencies identified in Quality Assurance audits dating back to 1983), these program violations were identified by the NRC and broad in scope (unlike the situation that existed at Pilgrim, which the licensee references in its response). In particular, though QA audits were identifying deficiencies related to fire protection at the facility for an extended period of time, licensee management failed to act on that information to determine the true scope of the problem and implement appropriate corrective actions in a timely manner. Therefore, full mitigation of the civil penalty is inappropriate. With respect to the appendix R deficiencies, the NRC acknowledges that they were identified by a licensee contractor prior to the NRC Diagnostic Evaluation Team (DET) inspection in September and October 1991. However, the licensee audits of 1982 and 1985 were inadequate to identify these deficiencies. In addition, the licensee's review of the additional regulatory guidance provided in Generic Letters 85–01 and 86–10 was also insufficient to identify the deficiencies. Due to the significance of the appendix R violations, their longstanding nature and the prior opportunities the licensee had to identify and correct them, the NRC has decided not to fully mitigate the civil penalty.

With regard to the violation of 10 CFR 50.9 for incomplete and inaccurate information, the NRC recognizes that the violation was not willful and that the licensee has now implemented corrective action. Had the violation been willful or the licensee failed to develop appropriate corrective action to address the problem, the NRC would have considered taking stronger actions. Because the NRC identified the inaccurate information which the licensee's review process should have identified, no enforcement discretion on this basis is deemed warranted.

3. NRC Conclusion

The NRC has concluded that the violations occurred as stated and that the licensee has not provided an adequate basis to warrant full mitigation of the civil penalties. However, in recognition of the extensive corrective action taken by the licensee, as exemplified by the deliberate startup process, management changes and recent improved performance, the NRC has concluded that partial mitigation of the proposed civil penalties is warranted. These positive actions on the part of the licensee are sufficiently significant that the NRC has exercised broad discretion under the Enforcement Policy to reduce the amount of the civil penalties to $300,000.

[FR Doc. 93–2917 Filed 2–5–93; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31821; File No. SR-NASD-92-45]

Self-Regulatory Organizations; Amendments to Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Rules for Quotations and Transaction Reporting for High Yield Securities Including Bonds Quoted in the Fixed Income Pricing System

February 4, 1993.

Pursuasnt 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 February 3, 1993 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the Amendment No. 1 to the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the amendment to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing amendments to the regulatory requirements for members that participate in the high yield fixed income securities market. The proposed amendments clarify certain definitions contained in the rules and certain obligations of members. The trade reporting rules require members to report transactions in all high yield bonds traded over-the-counter to the NASD for regulatory purposes, and also require real-time trade reporting for securities included in the Fixed Income Pricing System ("FIPS"). FIPS has been developed to facilitate the collection, processing and dissemination of real-time, firm quotations for 30 to 50 of the most liquid bonds in the top tier of high yield fixed income securities. FIPS also provides for hourly dissemination of high/low trading ranges and accumulated volume in each bond quoted in the system.

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

The Association is amending its proposed regulatory requirements for members that participate in the high yield fixed income securities market. The amendments respond to comments from members on the proposed rules which require members to report transactions in all high yield bonds traded over-the-counter to the NASD for regulatory purposes, and also require real-time quotations and trade reporting for securities included in FIPS.[1] The FIPS system has been developed to facilitate the collection, processing and dissemination of real-time, firm quotations for 30 to 50 of the most liquid bonds in the top tier of high yield fixed income securities. FIPS also provides for hourly dissemination of high/low trading ranges and accumulated volume in each bond quoted in the system.

Specifically, the amendments clarify the following points:

1. The term "high yield security" refers to securities rated BB+ or lower by Standard & Poor's and does not include convertible debt securities or medium term notes within the definition;

2. The term "par value" has been changed to "face amount" to more accurately reflect bond usage;

3. Since FIPS dealers may enter and maintain one-sided quotations in a bond, their obligations have been modified to reflect that such dealers must be willing to "buy *or* sell" securities at their quotes, rather than "buy *and* sell" at their quotes;

4. Since FIPS participants are required to display a firm price and a minimum size of 100 bonds, the amendments clarify that the price quoted is a round lot price and that members may charge odd-lot differentials for transactions of less than 100 bonds;

5. Members may report transactions to the NASD using each bond's unique identifier developed by the Association or by using the CUSIP number assigned to the bond;

6. There is no requirement to report zero volume if there have been no transactions in a bond on a given day; and

7. Definitions of cross and riskless principal transactions have been added.

The NASD believes that these amendments serve to clarify the obligations of members participating in the system. In addition, the NASD notes that other recommendations made by Merrill have either been incorporated into the FIPS system already, or are in the process of being reviewed by the staff and members. For example, Merrill suggests that the FIPS system maintain an on-line data base listing the participant brokers and dealers—the FIPS functionality will include such broker and dealer information; and Merrill recommends that FIPS be more of an open system that will interface with main frame computers or other vendor systems—FIPS is available for member local area network systems and the NASD is in the process of meeting with vendors to ascertain the feasibility of integrating FIPS functionality within their systems. Merrill also comments on withdrawing bonds from the system, on the effect of quotation halts on member trading, and on the ramifications for dealers that withdraw their quotas from the system. The NASD has already specified in the rules that when bonds have matured or been called, they will be immediately removed from the system—additional information on such withdrawals will be broadcast to members on the FIPS news screen. Quotation halts do not automatically prohibit trading in the bonds but rather serve to alert members and the public that news is out on the issuer. Finally, members withdrawing their quotations from the system for regulatory purposes will be permitted to reenter quotes, but the NASD believes that the obligation to quote continuously in each security in which the member is acting as dealer prohibits other, non-regulatory, withdrawals from the system.

Additional comments have been received regarding the trade reporting protocols (i.e., to require all transactions to be reported by all members or to require sell side reporting regardless of which member is a participant in the FIPS system) and the NASD is currently evaluating these recommendations in light of surveillance requirements. If the reporting requirements are to be changed, the NASD will submit another Rule 19b-4 proposal to the SEC for

[1] See letter to Jonathan G. Katz, Secretary, SEC from Dennis Greeley, Merrill Lynch (December 28, 1992). See also letters to Selwyn Notelovitz, Branch Chief, SEC and Elizabeth MacGregor, Branch Chief, SEC from Richard Ketchum, Executive Vice President and Chief Operating Officer, NASD responding to other comments submitted to the SEC (January 26, 1993 and February 1, 1993, respectively).

review prior to start up of the FIPS system.

The NASD also notes that references in the initial rule proposal to a universe of 50 high yield bonds for quotations and real-time trade reporting in the FIPS system is not an upper limit of the system. Initially, the NASD anticipates that approximately 35 high yield bonds will be included in the system, and that list will grow to 50 bonds by the end of the first year of operation. The FIPS system has not been designed to limit the number of bonds to 50, however, and if experience in the high yield bond market demonstrates that the liquidity is present to support additional bonds, more issues could be added. Finally, in the rule proposal the NASD has committed to review the list of eligible bonds "periodically." Initially, the NASD anticipates that this review will occur quarterly, but as time and experience with the system grow, the NASD may elect to review the securities on a semi-annual basis, and will alert the SEC to such a change.

The NASD believes the proposed rule change is consistent with sections 11A and 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system." Section 11A(a)(1)(C)(iii) states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. The FIPS system will increase transparency in the high yield market by providing participants and investors with real-time, firm quotations in the most liquid bonds, and will facilitate surveillance of the market with real-time trade reporting requirements pertaining to FIPS securities and end-of-day trade reporting requirements for all other OTC transactions in high yield bonds.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD worked with the Ad Hoc Committee on Transparency in the High Yield Market and with the NASD Fixed Income Committee in developing these rules and procedures.

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 it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD 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 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 February 23, 1993.

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. 93-3069 Filed 2-4-93; 1:45 pm]

BILLING CODE 8010-01-M

[Release No. IC-19247; File No. 812-8126]

Security First Life Insurance Co., et al.; Application for Amended Order

February 1, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an amended order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Security First Life Insurance Company ("Security First Life"), Security First Life Separate Account A (the "Separate Account"), and Security First Financial, Inc.

RELEVANT 1940 ACT SECTIONS: Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek to amend an order, that currently permits them to deduct a mortality and expense risk charge from the assets of the Separate Account, to reflect the inclusion of an asset-based administrative fee in connection with the offer and sale of certain individual deferred variable annuity contracts.

FILING DATES: The application was filed on October 13, 1992 and amended on January 21, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 26, 1993, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20459. Applicants, c/o Routier, Mackey and Johnson, P.C., 1700 K Street, NW., suite 1003, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Counsel, at (202) 504-2802, or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Security First Life is a stock life insurance company founded in 1960 and organized under the laws of the State of Delaware. Security First Life is authorized to transact the business of life insurance, including annuities, and is presently admitted to do business in forty-eight states and the District of Columbia.

2. By resolution of its Board of Directors on May 29, 1980, Security First Life established the Separate Account under the Delaware Insurance Code as a funding vehicle for certain group variable annuity contracts. In 1986, the Separate Account also began funding individual flexible payment deferred annuity contracts (the "Contracts"). The Separate Account has been registered as a unit investment trust under the 1940 Act since 1982. The Separate Account is divided into multiple series of accumulation and annuity units, with each series investing in the shares of a registered open-end management company, or series thereof. Some of those underlying mutual funds are available solely in connection with variable annuity contracts sold to certain tax-qualified plans.

3. Security First Financial, Inc., a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc., is the principal underwriter for the Contracts. Security First Financial, Inc. is a Delaware corporation and an affiliate of Security First Life.

4. The Contracts may be issued to plans qualifying for special tax treatment as individual retirement annuities, section 403(b) tax-sheltered annuities, section 457 deferred compensation plans, money purchase pension plans, and profit-sharing plans. The Contracts also may be issued pursuant to retirement plans that do not qualify for special tax treatment and to individuals seeking to accumulate funds for retirement, whether or not such individuals are otherwise participating in retirement plans. Purchase payments under the Contracts may be made to the general account of Security First Life, the Separate Account, or may be allocated between them. The minimum initial purchase payment is $1,000, and each additional purchase payment must be at least $100. There is no initial sales charge, although a contingent deferred sales charge may be deducted in the event the Contract owner requests a full or partial withdrawal. The contingent deferred sales charge is based on a graduated table of charges, starting at 7% of purchase payments credited within one year of the withdrawal, and decreasing by 1% per year for purchase payments credited earlier. No contingent deferred sales charge will be made for that part of the first withdrawal in a Contract year that does not exceed 10% of the Contract owner's interest in the Separate Account and 10% of his or her interest in the General Account.

5. On May 28, 1982, the Commission issued an order (the "Order") to Security First Life, the Separate Account and Security First Financial, Inc. exempting them from the provisions of sections 26(a) and 27(c)(2) of the 1940 Act to the extent necessary to allow Security First Life to deduct from the Separate Account's assets certain mortality and expense risk charges. At that time, the Separate Account funded only group variable annuity contracts.

6. On December 4, 1986, the Order was amended (the "Amended Order"), exempting Applicants from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to allow Security First Life to deduct from the Separate Account's assets a mortality and expense risk charge with respect to the individual flexible payment deferred annuity contracts. The mortality risk component of that charge is computed at an annual rate of .80% of the assets of the Separate Account, and is deducted daily from each series in proportion to that series' assets. The expense risk component of the charge is computed at an annual rate of .45% of the assets of the Separate Account, and is deducted daily from each series in proportion to that series' assets.

7. Applicants request that the Amended Order be further amended with respect to the individual flexible payment deferred annuity contracts. Specifically, it is proposed that those Contracts, which presently do not impose an administrative fee, be modified to include such a fee. Applicants state that unlike the vast majority of variable annuity contracts now on the market, the Contracts assess no annual administrative charge and no charge for administrative services. Applicants now propose that an administrative fee of .15% of the assets of the Separate Account be imposed on newly-issued Contracts. The amount of this fee will be guaranteed not to be increased by Security First Life.

Applicants' Legal Analysis

1. Section 27(c)(2) of the 1940 Act prohibits any registered investment company issuing periodic payment plan certificates, and any depositor of or underwriter for such company, from selling any such certificate unless, among other things, the proceeds of all payments on such certificates (excluding sales loads) are held by a qualified trustee or custodian under an indenture or agreement containing, in substance, the provisions required by sections 26(a)(2) and 26(a)(3) for trust indentures of unit investment trusts. Among the provisions required to be included in such an indenture or agreement is the proviso in section 26(a)(2)(C) that permits the trustee or custodian to deduct from the assets of the trust as an expense only bookkeeping and other administrative services charges not exceeding such reasonable amount as the Commission may prescribe. Thus, a mortality and expense risk charge is not the type of expense permitted by section 26(a)(2)(C), and an exemptive order must be obtained to deduct such a charge.

2. In 1986, the Applicants were granted an order exempting them from sections 26(a)(2)(C) and 27(c)(2) to allow Security First Life to deduct a mortality and expense risk charge from the Separate Account's assets in connection with the issuance of the Contracts.

3. Applicants contend that the imposition of an administrative fee of .15% of the assets of the Separate Account should not affect the validity of the Amended Order issued in 1986. Under Rule 26a–1 under the 1940 Act, such fees can be deducted without the necessity of an exemptive order, so long as the amount of the fee meets the Rule's "at cost" standard. Applicants represent that the administrative fee is assessed at cost with no anticipation of profit. Therefore, Applicants contend that no exemptive order is required for Security First Life to deduct the administrative fee. However, to preclude any argument that the absence of any administrative charge was crucial to the Commission's grant of the Amended Order, Applicants request that the Amended Order be further amended to grant an exemption from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to allow Security First Life to impose the administrative fee described above on the newly-issued Contracts.

Conclusion

Applicants submit that the foregoing facts and representations provide substantial assurance that the relief requested under sections 26(a)(2)(C) and 27(c)(2) is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-2966 Filed 2-5-93; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-10428]

Issuer Delisting; Application to Withdraw From Listing and Registration; Sunrise Technologies, Inc., Common Stock, No Par Value

February 2, 1993.

Sunrise Technologies, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE" or "Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Common Stock is currently listed on the PSE and traded on the National Market System of the National Association of Securities Dealers Automated Quotation System ("NASDAQ/NMS").

According to the Company, the Board of Directors of the Company unanimously consented to withdraw the Company's Common Stock from listing on the Exchange and to retain the listing of such Common Stock on the NASDAQ/NMS. The decision of the Board is based, in part, upon the belief that the costs associated with listing the Common Stock on the Exchange and NASDAQ/NMS outweigh the benefits to the Company and its shareholders associated with such dual listing.

Any interested person may, on or before February 24, 1993, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-2965 Filed 2-5-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on General Aviation Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

DATES: The meeting will be held on March 5, 1993, at 2 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Washington, DC, on the fifth floor, room 5B.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Myres, Flight Standards Service (AFS-850), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-8150; FAX: (202) 267-5230.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aviation Rulemaking Advisory Committee to be held on March 5, 1993, at FAA Headquarters, 800 Independence Avenue, SW., Washington, DC, on the fifth floor, room 5B. The agenda for this meeting will include progress reports from the IFR Fuel Reserve, Operations over the High Seas, Minimum Safe Operating Altitude, and Experimental/Restricted Category Operations Working Groups.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on February 2, 1993.

Ron Myres,

Assistant Executive Director for General Aviation Operations Aviation Rulemaking Advisory Committee.

[FR Doc. 93-2924 Filed 2-5-93; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualification issues.

DATES: The meeting will be held on March 4, 1993, at 9 a.m.

ADDRESSES: The meeting will be held at FAA Headquarters in the MacCracken Room, 10th Floor, 800 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service (AFS-200), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on March 4, 1993, at the FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591. The agenda for this meeting will include progress reports from the Air Carrier Working Group and the Cabin Safety Working Group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on February 2, 1993.

David R. Harrington,

Assistant Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 93-2925 Filed 2-5-93; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent to Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Capital Airport, Springfield, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 10, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration. Chicago Airports District Office, 2300 East Devon Ave., room 258, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce E. Carter, Director of Aviation, of the Springfield Airport Authority at the following address:

Capital Airport, Springfield Airport Authority, Springfield, Illinois 62707.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Springfield Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon Ave., room 258, Des Plaines, Illinois 60018, (312) 694-7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 26, 1993, the FAA determined that the application to use the revenue from a PFC submitted by Springfield Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 29, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00

Proposed charge effective date: June 1, 1992

Proposed charge effective date: May 1, 1994

Total estimated PFC revenue: $641.056

Brief description of proposed project(s):

1. Aircraft Rescue Firefighting Vehicle
2. Overlay Runway 18/36
3. Rehabilitate Taxiway A
4. Edge Lighting Improvements
5. Taxiway CA Overlay
6. Snow Removal Equip Building (Site Work and Phases I and II)
7. Acquisition of Boucher Property
8. Acquisition of Niehaus Property
9. Acquisition of Richardson Property
10. Acquisition of Miller Property
11. Acquisition of Bramblett Property
12. Acquisition of Harris Property
13. Snow Removal Equipment
14. Airfield Signage (Phase II)
15. Security/Access Modifications to meet FAR part 107.14 Requirements and Replace Airport Perimeter Fencing
16. Environmental Assessment for Runway 12/30 Extension
17. Extension of Runway 12/30
18. Newly Required FAA Signage

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On Demand Air Taxis.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT.**"

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Springfield Airport Authority.

Issued in Des Plaines, Illinois on January 29, 1993.

James H. Washington,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 93-2928 Filed 2-5-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1992—Rev., Supp. No. 12]

Surety Companies Acceptable on Federal Bonds; Suspension of Authority; Ranger Insurance Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to Ranger Insurance Company, of Houston, TX, under the United States Code, title 31, Sections 9304-9308, to qualify as an acceptable surety on Federal bonds is hereby suspended, effective February 3, 1993. The suspension will remain in effect until further notice.

The Company was last listed as an acceptable surety on Federal bonds at 57 FR 29389, July 1, 1992. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570 to reflect the suspension.

With respect to any bonds currently in force with Ranger Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874-6507.

Dated: February 1, 1993.

Charles F. Schwan, III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93-2837 Filed 2-5-93; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on February 10 in Room 600, 301 4th Street, SW., Washington DC from 10-12 p.m.

The Commission will discuss findings from their oversight visits to the East-West Center, CINCPAC and USIA's posts in Asia.

FOR FURTHER INFORMATION: Please call Gloria Kalamets, (202) 619-4468, if you

are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: February 3, 1993.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 93-2976 Filed 2-5-93; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 24
Monday, February 8, 1993

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).

DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–49), U.S.C. 552B:

DATE AND TIME: February 10, 1993, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 973rd Meeting—February 10, 1993, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 7481–061, NYSD Limited Partnership
CAH–2.
Project No. 1473–006, Montana Power Company, Granite County, Montana
CAH–3.
Omitted
CAH–4.
Docket No. 9607–003, JDJ Energy Company, Inc.
CAH–5.
Project No. 11182–001, Cowlitz Basin 1 Limited Partnership
Project No. 11183–001, Cowlitz Basin 2 Limited Partnership
Project No. 11184–001, Cowlitz Basin 3 Limited Partnership
Project No. 11185–001, Cowlitz Basin 4 Limited Partnership
Project No. 11186–001, Cowlitz Basin 5 Limited Partnership
Project No. 11187–001, Cowlitz Basin 6 Limited Partnership
Project No. 11188–001, Cowlitz Basin 7 Limited Partnership
Project No. 11189–001, Cowlitz Basin 8 Limited Partnership
Project No. 11190–001, Cowlitz Basin 9 Limited Partnership
Project No. 11191–001, Cowlitz Basin 10 Limited Partnership
CAH–6.
Omitted
CAH–7.
Omitted
CAH–8.
Project No. 11080–001, Eagle Mountain Energy Company
CAH–9.
Project No. 8369–019, Village of Saranac Lake, New York
CAH–10.
Omitted

Consent Agenda—Electric

CAE–1.
Docket Nos. ER92–611–000, ER92–664–000, ER92–843–000 and ER93–45–000, Entergy Power, Inc.
CAE–2.
Docket Nos. ER93–229–000 and EL93–18–000, Florida Power Corporation
CAE–3.
Omitted
CAE–4.
Docket Nos. EF92–5172–000 and 001, United States Department of Energy—Western Area Power Administration (Salt Lake City Area Intergrated Projects)
CAE–5.
Docket Nos. ER91–150–010 and ER91–570–007, Southern Company Services, Inc.
CAE–6.
Docket No. ER91–565–002, New England Power Company
CAE–7.
Docket No. ER93–17–001, Maine Public Service Company
CAE–8.
Docket No. ER92–764–001, New England Power Company
Docket No. ER92–766–001, Northeast Utilities Service Company
CAE–9.
Docket No. EL92–37–001, Doswell Limited Partnership
Docket No. EL92–43–001, Doswell Limited Partnership v. Virginia Electric and Power Company
CAE–10.
Docket No. EG93–6–000, Bald Eagle Power Company, Inc.
CAE–11.
Docket No. EG93–7–000, Richmond Power Enterprises, L.P.
Docket No. EG93–8–000, Entergy Richmond Power Corporation
Docket No. EG93–9–000, Entergy Power Development Corporation
CAE–12.
Docket No. PL–93–2–001, Prior Notice and Filing Requirements Under Part II of the Federal Power Act
CAE–13.
Docket No. ER93–251–000, Wisconsin Electric Power Company

Consent Miscellaneous

CAM–1.
Docket No. PL93–1–001, Post-Employment Benefits Other Than Pensions

Consent Agenda—Oil and Gas

CAG–1.
Docket Nos. RP92–166–004, 005 and 007, Panhandle Eastern Pipe Line Company
CAG–2.
Docket No. RP93–60–000, National Fuel Gas Supply Corporation
CAG–3.
Docket Nos. TQ92–5–1–005, 007, TQ92–6–1–000, TQ93–1–1–000, TQ93–2–1–000, TA93–1–1–000 and RP92–237–000, Alabama-Tennessee Natural Gas Company
CAG–4.
Docket No. RP85–202–006, Trunkline Gas Company
CAG–5.
Docket No. RP85–203–007 and RP88–203–006, Panhandle Eastern Pipe Line Company
CAG–6.
Docket No. RP85–148–000, Transcontinental Gas Pipeline Corporation
CAG–7.
Docket No. RP93–36–001, Natural Gas Pipeline Company of America
CAG–8.
Docket No. RP93–23–002, Transcontinental Gas Pipe Line Corporation
CAG–9.
Docket No. RP88–67–062 (Phase II PCBs), Texas Eastern Transmission Corporation
CAG–10.
Omitted
CAG–11.
Docket No. RP91–137–010, Transcontinental Gas Pipe Line Corporation
CAG–12.
Omitted
CAG–13.
Docket No. RP92–166–008, Panhandle Eastern Pipe Line Company
CAG–14.
Docket No. PR92–19–000, Delhi Gas Pipeline Corporation
CAG–15.
Docket No. PR92–20–000, Supenn Pipeline
CAG–16.
Docket Nos. TQ89–1–46–040, 025, 026, 005, RP86–165–000, *et al.* and RP86–166–000, *et al.*, Kentucky West Virginia Gas Company
Docket No. CP92–639–000, Columbia Gas Transmission Corporation and Inland Gas Company
CAG–17.
Docket No. RP85–181–005, Texas Gas Transmission Corporation
CAG–18.
Docket Nos. RP85–203–011 and RP88–203–009, Panhandle Eastern Pipe Line Company

Docket No. RP85-202-009, Trunkline Gas Company

CAG-19.

Docket Nos. RP85-170-000 and 007, Texas Eastern Transmission Corporation

CAG-20.

Omitted

CAG-21.

Docket No. RS92-5-001, Columbia Gas Transmission Corporation

Docket No. RS92-6-001, Columbia Gas Transmission Company

CAG-22.

Docket Nos. RP93-6-001 and RS92-75-001, Paiute Pipeline Company

CAG-23.

Docket No. RS92-22-003, Panhandle Eastern Pipe Line Company

CAG-24.

Omitted

CAG-25.

Omitted

CAG-26.

Docket No. CP91-1110-000, Colorado Interstate Gas Company

CAG-27.

Docket No. CP92-241-007, Kern River Gas Transmission Company

CAG-28.

Docket No. CP91-2704-003, Blue Lake Gas Storage Company

Docket No. CP91-2705-002, ANR Pipeline Company

Docket No. CP91-2730-002, ANR Storage Company

CAG-29.

Omitted

CAG-30.

Docket No. CP82-487-036, Williston Basin Interstate Pipeline Company

CAG-31.

Docket No. CP92-661-000, Freeport-McMoRan, Inc. and Aquilla Energy Marketing Corporation v. K N Energy, Inc.

Docket No. CP92-519-000, K N Energy, Inc.

CAG-32.

Docket No. CP93-117-000, San Diego Gas & Electric Company

CAG-33.

Docket No. RS92-60-007, El Paso Natural Gas Company

CAG-34.

Docket Nos. RP92162-000 and 005, Superior Offshore Pipeline Company

Hydro Agenda

H-1.

Reserved

Electric Agenda

E-1.

Docket No. RM93-1-000, Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status. Final Rule.

E-2.

Omitted

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.

Reserved

II. Restructuring Matters

RS-1.

Docket Nos. RS92-10-000, RP92-134-000, RP93-15-000, 001, RP93-1-000, CP71-273-009 and CP90-1098-000, Southern Natural Gas Company. Order on compliance filing.

RS-2.

Docket No. RS92-38-000, Gulf States Transmission Corporation. Order on compliance filing.

RS-3.

Docket No. RS92-4-000, Colorado Interstate Gas Company. Order on compliance with restructuring rule.

RS-4.

Docket No. RS92-13-000, Williston Basin Interstate Pipeline Company. Order on compliance with restructuring rule.

RS-5.

Docket No. RS92-7-000, Michigan Gas Storage Company. Order on compliance with restructuring rule.

RS-6.

Docket No. RS92-17-000, Iroquois Gas Transmission System, L.P. Order on compliance with restructuring rule.

RS-7.

Docket Nos. RS92-28-000, 001, 003, 004, RP93-14-002 and CP93-77-000, Algonquin Gas Transmission Company. Order on compliance with restructuring rule and on stipulation and agreement.

RS-8.

Docket No. RS92-45-000, Natural Gas Pipeline Company of America. Order on compliance plan.

III. Producer Matters

PF-1.

Reserved

IV. Pipeline Certificate Matters

PC-1.

Reserved

Dated: February 3, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93-3070 Filed 2-4-93; 2:19 pm]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, February 11, 1993

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 11, 1993, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Common Carrier—Title: Policies and Rules Concerning Interstate Pay-Per-Call Services. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking and Notice of Inquiry* concerning the provision of interstate pay-per-call services to conform with the requirements of the Telephone Disclosure and Dispute Resolution Act.

1—Common Carrier—Title: Policies and Rules Concerning Interstate 900 Telecommunications Services (CC Docket No. 91-65). Summary: The Commission will consider adoption of an *Order on Reconsideration* regarding various petitions for reconsideration governing the provision of interstate 900 services.

2—Common Carrier—Title: Amendment of the Commission's Rules Regarding Regulation of International Receive-Only Earth Stations (RM-7931). Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* concerning the licensing of international receive-only earth stations.

3—Mass Media—Title: Amendment of the Commission's Rules With Regard to the Instructional Television Fixed Service (ITFS). Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* regarding an ITFS window filing procedure.

4—Mass Media—Title: Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992—Direct Broadcast Satellite Public Service Obligations. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* regarding the application of public interest requirements and non-commercial educational and informational programming carriage obligations to direct broadcast satellite (DBS) services.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued February 4, 1993.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-3104 Filed 2-4-93; 2:48 pm]

BILLING CODE 6712-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, February 11, 1993.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Steel Branch Mining Company*, Docket No. WEVA 91-2077, etc. (Issues include whether the judge erred in finding Steele Branch violated 30 CFR § 77.404(a), and § 50.11(b).)

2. *Energy West Mining Company*, Docket No. WEST 91-83-R. (Issues include whether the judge erred in finding Energy West violated 30 CFR § 50.20.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/800–877–8339 Toll Free.

Dated: February 3, 1993.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93–3107 Filed 2–4–93; 3:04 pm]

BILLING CODE 6735–01–M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

DATE AND TIME: Thursday, February 4, 1993, 1:00 p.m., Eastern Daylight Time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Closed—Meeting.

MATTER CONSIDERED: Discussion by the National Commissioners involving one case pursuant to a reference under 28 C.F.R. Section 2.17. This case was originally heard by an examiner panel wherein the inmate of Federal prison applied for parole. This is an emergency meeting which requires immediate consideration by the Commission because of the statutory deadline involved in the case.

AGENCY CONTACT: Jeffrey Kostbar, Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5968.

Dated: February 4, 1993.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 93–3101 Filed 2–4–93; 2:47 pm]

BILLING CODE 4410–01–M

Corrections

Federal Register
Vol. 58, No. 24
Monday, February 8, 1993

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-88-202]

United States Standards for Grades of Canned Green Beans and Canned Waxed Beans

Correction

In rule document 93-930 beginning on page 4295 in the issue of Thursday, January 14, 1993, make the following correction:

§ 52.449 [Corrected]

1. On page 4299, in the second column, in § 52.449(c)(1)(iii), in the first line, "reasonably" should read "fairly".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-070-03-4210-04; M81796]

Realty Action: Exchange, MT

Correction

In notice document 92-30244 beginning on page 59120 in the issue of Monday, December 14, 1992, make the following correction:

1. On page 59121, in the first column, under *Powell County*, in land description T. 10 N., R. 9 W., in the last line, "NE¼,SW¼," should read "NE¼SW¼,".

BILLING CODE 1505-01-D

federal register

Monday
February 8, 1993

Part II

Environmental Protection Agency

National Pollutant Discharge Elimination System General Permit and Reporting Requirements for Discharges From Concentrated Animal Feeding Operations; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4552-8]

National Pollutant Discharge Elimination System General Permit and Reporting Requirements for Discharges From Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency.

ACTION: Region 6 public notice of the final permitting decision. General NPDES permits for discharges from confined animal feeding operations.

SUMMARY: Pursuant to sections 301, 304 (b) and (c), and 306 (b) and (c) of the Clean Water Act (CWA) 40 CFR 122.23 defines concentrated animal feeding operations as point sources subject to the NPDES permit program. 40 CFR part 122, appendix B lists the criteria for determining a Concentrated Animal Feeding Operation (CAFOs) (§ 122.23). 40 CFR part 412 establishes the effluent limitation guidelines for Feedlots pursuant to sections 306 (b) and (c) of the Clean Water Act.

This is to give notice that the U.S. Environmental Protection Agency, Region 6, has made a final permitting decision and will issue the following Permits under the National Pollutant Discharge Elimination System. The permits will become effective 30 days after the date of this Public Notice. Any substantial changes from the Draft Permit are cited.

This notice of the issuance of separate general permits for concentrated animal feeding operations in four States (Louisiana, New Mexico, Oklahoma, and Texas) without authorized NPDES State programs; on Indian lands in New Mexico and Oklahoma. Separate general permits are being noticed for each State.

DATES: The permit will become effective on March 10, 1993.

ADDRESSES: The issuance is based on a final staff review of the administrative record and comments received. A Response to Comments is available by writing to: Ellen Caldwell, Permits Branch of Water Division (6W-PS), U.S. Environmental Protection Agency, Region 6, 1445 Ross Ave., suite 1200, Dallas, Texas 75202 (214) 655-7190. The public record is located at EPA Region 6, and is available upon written request. Requests for copies of the public record should be addressed to Ellen Caldwell at the address above. A reasonable fee may be charged for copying. Further information including the administrative record may be viewed at the above address between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell, (214) 655-7190.

SUPPLEMENTARY INFORMATION:

Contents of this Preamble

Part I. Changes to the Draft Permit.
Part II. Responsiveness Summary
Part III. Economic Impact
Part IV. Effect of Additional Federal Regulations
A. National Environmental Policy Act
B. Executive Order 12291
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
U.S. Environmental Protection Agency—Region 6, Public Notice of the Final Permitting Decision.

Part I. Changes to the Draft Permit

Based on information received during the public comment period the Agency had made minor changes to the conditions in the draft permit. The following are changes which were made to the draft permit which was proposed July 22, 1992 (57 FR 32475):

1. Under Part I, Section B.1. Existing Facilities and Section D., owners or operators of concentrated animal feeding operations (CAFO), as defined in 40 CFR part 122 appendix B, are authorized under the terms and conditions of this general permit upon submission of a notice of intent (NOI). This NOI form has been included as appendix B of this general permit.

2. Under Part I, Section B.4. Expanding Facilities, facilities expanding operations to more than the number of animals specified in 40 CFR part 122 appendix B(a) will be required to submit a new NOI prior to construction of the expansion.

3. To comply with statutory requirements in 40 CFR 122.49; Part I of the general permit, Section C. Limitations on Coverage has been changed to limit from permit coverage: CAFOs which adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat; CAFOs which adversely affect properties listed or eligible for listing in the National Register of Historic Places.

4. Item 4. of Part I. Section C. has been changed to limit from coverage CAFOs that discharge all their runoff and waste water to a publicly owned sanitary sewer system.

5. The term "waters of the U.S." has been clarified in various parts of this general permit, listing the defined waters in 40 CFR 122.2. This regulatory definition applies for every reference to waters of the U.S. in this general permit.

6. Part III, Section B. has been clarified to state more clearly that when provisions in an approved Soil Conservation Service (SCS) plan are substituted for a applicable Best Management Practices (BMP) or portions of the Pollution Prevention Plan (PPP), the PPP must refer to the appropriate section of the SCS plan and a copy of this SCS plan must be kept on site.

7. Date log requirements indicating monthly inspection of the retention facility have been changed to quarterly inspections.

8. Requirements for manure which is sold or given to other persons for use have been moved from Part III, Section B. to Part III, Section B.2.f.(2)(j). These requirements have been changed to require the permittee to maintain a log of manure sold in wet tons, dry tons, or cubic yards and the permittee must make available to the hauler any nutrient sample analysis from that year.

9. Requirements for Retention Capacity Calculations, Retention Facility Embankments, Retention Facility Dewatering, and permanent markers have been moved from Part III, Section B.1. to Part III, Section B.2.f.(2) (B), (C), (D), and (E) respectively. Slight changes have been made in these items for clarification.

10. The requirement that facilities shall not expand operations, either in size or numbers of animals, prior to amending or enlarging the waste handling procedures and structures to accommodate any additional wastes that will be generated by the expanded operations has been added to Part III, Section B.1.b.

11. Part III, Section B.d. has been modified that new facilities shall not be built in a water of the U.S.

12. Part III, Section B.f. has been changed to clarify that water retention facilities or holding pens may not be located in the 100-year flood plain unless the facility is protected from inundation and damage that may occur during that flood event.

13. Part III, Section B.g. has been modified that facilities shall not locate waste water retention facilities, holding pens or waste/wastewater disposal sites closer to water wells than specified by State requirements.

14. Part III, Section B.i. has been modified that waste handling, treatment, and management shall not result in the contamination or drinking water.

15. Part III, Section B.1. has been modified to require the proper disposal time of dead animals to be three (3) days instead of 24 hours.

16. Items n. and o. of Part III, Section B. have been moved from the Pollution Prevention Plans.

17. Part III, Section B.2.a. has been changed to clarify that the Pollution Prevention Plan may refer to the Soil Conservation Service plan when the SCS plan documentation contains equivalent requirements for the facility.

18. The schedule for completion of Pollution Prevention Plans has been modified in Part III, Section B.2.b. to separate large facilities, medium facilities, and small facilities with different time requirements for completion.

19. The time requirement for changes in a Pollution Prevention Plan which does not meet minimum requirements after notification by the Director has been changed from 30 to 90 days in Part III, Section B.2.d.

20. Part III, Section B.2.f.(2)(F) has included a requirement that a rain gauge shall be kept on site and properly maintained and that log of all measurable rainfall events shall be kept with the Pollution Prevention Plan. This also replaces the requirement in the draft general permit in Part IV, Monitoring and Reporting Requirements, that requires information from the nearest available weather station concerning precipitation events.

21. Under Part III, Section B.2.f.(2)(H)(a), documentation of no hydrologic connection has been simplified and condensed; no longer requiring depth to ground water, thickness and lithology of the uppermost aquifer, and a piezometric map. This item now allows for documentation of no hydrologic connection to be certified by a qualified ground water scientist.

22. Site-specific conditions are now considered in the design of liner construction in Part III, Section B.2.f.(2)(H)(b).

23. The requirement for liner inspection has been removed from Part III, Section B.2.f.(2)(H)(c).

24. Part III, Section B.2.f.(2)(H)(c) now includes the requirement that no trees shall be allowed to grow within the potential distance of the root zone.

25. These requirements: Documentation of liner maintenance shall be kept with the Pollution Prevention Plan. The permittee shall have a Soil Conservation Service engineer, Professional Engineer, or qualified groundwater scientist review the documentation and do a site evaluation every five years, or once every permit term whichever comes first; have been added to Part III, Section B.2.f.(2)(H)(c).

26. Part III, Section B.2.f.(2)(H)(c) has been changed to only require the installation of a leak detection system or monitoring wells when notified by the Director that the potential exists for the contamination of surface waters or drinking water. Documentation of compliance with the notification and all sampling data must be kept with the Pollution Prevention Plan.

27. "It shall be considered 'Proper Operation and Maintenance' for a facility which has been properly operated, and that is in danger of imminent overflow due to chronic or catastrophic rainfall, to discharge waste waters to land application sites for filtering prior to discharging to waters of the U.S." has been added as Part III, Section B.2.f.(2)(I)(e).

28. "The operator shall notify the appropriate fish and wildlife agency in the event of any significant fish, wildlife, or migratory bird/endangered species kill or die-off on or near retention ponds or in fields where waste has been applied, and which could reasonably have resulted from waste management at the facility" has been added to Part III, Section B.2.f.(2)(I)(h) to provide protection from land disposal or application of waste water.

29. Where land application sites are isolated from surface waters and no potential exists for runoff to reach a water of the U.S., application rates may exceed nutrient crop uptake rates as provided in an approved state program. No land application under this section shall cause or contribute to a violation of water quality standards has been added as Part III, Section B.2.f.(2)(I)(h).

30. Part III, Section B.2.f.(2)(J) requires: (1) A description of waste handling procedures and equipment availability; (2) the calculations and assumptions used for determining land application rates; and (3) any nutrient analysis data if laboratory analysis is done to be included in the Pollution Prevention Plan if manure is land applied.

31. Storage and/or surface disposal of manure in the 100-year flood plain or near water courses is allowed if protected by adequate berms or other structures; Part III, Section B.2.f.(2)(J)(a). The clarification: The land application of wastes at agricultural rates shall not be considered surface disposal in this case and is not prohibited, has also been added.

32. "Where land application sites are isolated from surface waters and no potential exists for runoff to reach a water of the U.S., application rates may exceed nutrient crop uptake rates as provided in an approved state program. No land application under this section shall cause or contribute to a violation of water quality standards", has been added as Part III, Section B.2.f.(2)(J)(i).

33. The item on good housekeeping requirements has been removed from Part III, Section B.2. Pollution Prevention Plan requirements.

34. The requirements for the evaluation of Recommended Management Practices listed in Appendix A has been removed Part III, Section B.2. Pollution Prevention Plan requirements.

35. Discharge sampling requirements have been modified based on CAFO size to separate large facilities, medium facilities, and small facilities with different schedules for analysis in Part IV, Section A.5.

36. Analysis requirements for total phosphorus, total Kjeldahl nitrogen and nitrate nitrogen have been removed from Part IV, Section A.7.

37. Items for Anticipated Noncompliance, Other Noncompliance Reporting, Bypass of Treatment Facilities, and Upset Conditions have been removed from Part IV.

38. Items regarding Toxic Pollutants and Oil and Hazardous Substance Liability have been removed from Part V.

39. Definitions for Agronomic rates, Best Available Technology, Best Conventional Technology, Hydrologic connection, and Qualified groundwater scientist have been added to, and the definition for Bypass has been removed from Part VII.

40. The definition for Concentrated animal feeding operation has been clarified in Part VII.

Part II. Responsiveness Summary

Many issues, questions and comments were submitted to the Agency during the public comment period. Below is a summary of the issues raised and the Agency's responses.

A. Corrections and General Permitting Issues

1. Several commenters requested corrections of language in the fact sheet published with the proposed permit. A fact sheet is published to explain the permitting decisions used to develop a proposed permit. A responsiveness summary or a response to comments accompanies the final permit and serves as the explanation of the permitting decisions made in response to the comments received. Because the fact sheet will not be published again, corrections to it will not be necessary. Where the comments illustrate confusion or misunderstanding of issues or terms explained in the fact sheet, they will be addressed in the responsiveness summary under the appropriate subject heading.

2. Almost all commenters requested answers in writing to the questions, comments, and concerns which they submitted. Unfortunately many comments were received with no return address. It is the administrative responsibility of EPA to provide a responsiveness summary to all persons that provided comments during the public hearing process or public comment period (40 CFR 124.17). EPA regrets that it will not be able to send a response to comments to those commenters that neglected to provide the Agency with a return address; however, the publication of this responsiveness summary will serve to inform those persons of the Agency's decisions.

3. Many of the comments received express concern that the only reason that Region 6 is issuing the permit is in response to special interest groups opposed to the dairy industry in Texas. The commenters are concerned that EPA will be swayed in its permitting decisions by portions of reports which were taken out of context to reflect a worst case scenario. These persons requested that Region 6 not rush its efforts for the Region to use all available sources of information to develop a reasonable general permit. A few persons questioned whether Region 6 would really listen and consider the testimony and comments made at the public hearings which were held in each state.

EPA reviews all documents referred to in comments which are submitted during the comment period. EPA weighs all scientific and factual information, and other comments whether submitted in writing during the comment period, or as testimony during the public hearing process as required in 40 CFR 124.11 and 124.12.

4. Many persons pointed out that farmers are natural conservationists, and as such are natural environmentalists. Some persons opposed the permit because they believed that agriculture was being blamed for "naturally occurring circumstances". Many persons were concerned with the perception of agriculture as a source of pollution that would accompany the issuance of this permit. These commenters suggest that the private citizens which operate these facilities are more familiar with what is "Proper Operation and Management" of a CAFO than EPA, and that they can make better determinations about the protection of the natural resources of the land and water.

While EPA agrees with the commenters that most farmers are good natural conservationists, it is apparent from the growing body of information that water quality problems exist which are attributable to animal waste management. Reasons for this may vary, however, it is EPA's responsibility to regulate all point sources of pollution under the authority of the Clean Water Act. These facilities are included in the definition of a point source in part 502 of the Act. Region 6 believes that the requirements reflected in the final general permit do coincide with the good management practices already established in the agricultural community, and will not prove too burdensome for those operators which have established good environmental practices.

5. The Region received several comments expressing the need for a permit to be available for unpermitted CAFOs to be compliant with the Clean Water Act. CAFOs in Region 6 may be discharging in violation of the Clean Water Act. Region 6 believes that the first step in improving water quality and Clean Water Act compliance is to provide a permitting vehicle which will be protective for the environment and cost effective for the operators of CAFOs.

6. While many commenters and producer groups endorse the Region's use of a general permit, some commenters question the need for a permitting program in Region 6 states. Many persons questioned if any water quality problems exist in Region 6 which are associated with animal wastes or CAFOs. Many commenters suggested that EPA exhaust all state delegation activities before issuing a general permit. These commenters stated that they believed it would cause confusion over jurisdiction if there were both state and federal level regulation with which to comply.

Region 6 believes that the time for federal permitting action in the four states administered by this Region is past due. EPA Region 6 carries the burden of a large permitting program and must prioritize its workload. The most important aspect of this priority system is the impairment of water quality. It has become apparent that animal wastes are one of the major contributors to water quality problems in many watersheds across the nation. In Region 6 the water quality inventories which are complied by the state water quality agencies show a significant number of water bodies which are being impaired by the contribution of animal wastes. In Texas there are at least four segments of state river basins which are not meeting the standards set by the state. Of the water bodies which are listed as impaired in Oklahoma the waters impaired by CAFOs total 5 lake segments out of 21, and 10 river segments out of 42. In addition, Oklahoma has documented several fish kills associated with CAFO runoff. Oklahoma collects more specific information on CAFO associated water quality problems which may explain the higher numbers. Several segments of the Lake Pontchartrain Basin in Louisiana are impaired by CAFOs, as well as two other river basins in that state. New Mexico, which has fewer surface waters, has more documentation on groundwater contamination problems, however, CAFO impairment of the Pecos River Basin is being tracked by the state.

EPA agrees with the commenters inclination toward the delegation of the NPDES program authority to the States of Region 6. Section 402(b) of the Act allows states to request authority to administer the NPDES program in lieu of the EPA. This means that States must interpret and apply national standards through day-to-day program actions and mount a vigorous program of compliance and enforcement. To assume delegation a formal program package consisting of a Memorandum of Agreement, a Program Description, the Attorney General's Statement and a letter from the Governor must be submitted to the Region. The Region must carefully review the package for statutory completeness. Currently there are 39 states which have been authorized the NPDES program. Of the 39 states, the one State in Region 6 to have been authorized is the State of Arkansas. At the present time, EPA has not received an approvable program from any of the remaining four states, Louisiana, Texas, Oklahoma, and New Mexico. Region 6 is continuing to work closely with states in the Region, assisting them in their efforts to assume the NPDES program. Until the State has assumed authority for the NPDES permitting program, the permittee will be responsible for compliance with both State and Federal requirements. States which administer the NPDES program must control CAFOs with the same degree of stringency and in a manner consistent with the federal regulations.

7. Several of the comments received suggested that this permit was more stringent than the federal regulations. A few persons questioned why the four States in Region 6 would be subject to the general permit and not the other States in the nation. Region 6 has developed a general permit which reflects the federal program requirements which exist now. These requirements include a technology standard which was implemented in

1974, and the minimum technology standard for storm water permits (a Pollution Prevention Plan) which was established in 1991. The permit also includes Best Management Practices which the Agency believes are necessary to protect water quality from improper management of animal wastes. EPA would like to remind the public that a federally administered permit must include compliance with some federal programs which are not required of state administered permits (e.g. the requirement of an environmental review and possible Environmental Impact Statement under the National Environmental Policy Act). Additionally, Region 6 is only authorized to permit facilities in Texas, Louisiana, Oklahoma and New Mexico. Region 6 oversees the program administered by Arkansas.

8. Many commenters from Oklahoma were concerned with EPA's authority to regulate CAFO facilities in their state because the state does not recognize CAFOs as a point source. Many commenters and producer groups questioned why EPA would have the need to regulate facilities which were already sufficiently regulated under existing state programs. Many commenters stated that the permit was more stringent than the state requirements. These commenters further requested that EPA simply adopt the existing state program or permit instead of using the proposed general permit; and that the permit should contain only the state water quality standards and requirements.

Section 502 of the Clean Water Act includes concentrated animal feeding operations in the definition of point sources to be regulated by EPA through NPDES permits. This requirement of federal law is reflected in the definitions at 40 CFR 122.23 and Appendix B which define concentrated animal feeding operations as a point source.

Section 301 of the Act clearly states that EPA cannot be less stringent than currently defined in the national technology standards. However, it should be noted that any more stringent state treatment standards are required to be included in NPDES permits by this section of the Clean Water Act. EPA must, at a minimum, include the technology standards established by the Agency.

9. Many of the comments provided by operators, producer groups, and state agricultural agencies request that EPA use the information and services available through the USDA Soil Conservation Service and state Agriculture Departments and Extension Services in the development of the permit. Many persons expressed the opinion that the states had developed sound water quality management programs and that Region 6 should use them. Additionally, some commenters suggested that EPA should consult with the varying state agencies before proposing any new programs in that state.

During the comment period and in the process of final decision making, EPA has consulted with both the regulated community and agricultural agencies in all the States. In addition EPA has consulted the expertise of the USDA Soil Conservation Service and the U.S. Fish and Wildlife.

10. Several comments requested that the general permits for the four States be the same in regards to the requirements in the permit to provide economic equity. Conversely, many persons expressed doubt about EPA's ability to provide a general permit which would take into account the diversity of locale, geography, and climatic conditions that exist in Region 6. Some concerned citizens question EPA's use of a general permit for and its ability to protect water quality.

In developing this general permit, Region 6 has tried to maintain consistent requirements for each of the four states. However, where more stringent state standards exist and are needed to protect water quality in that state, specific state language or requirements have been included in the general permit. Region 6 has also tried to include requirements which will be protective of the environment while allowing for site specific variation when it is appropriate to provide adequate environmental protection. EPA has included management practices and pollution prevention requirements to insure the protectiveness of the general permit while at the same time has allowed for site specific variation where it can be documented as appropriate. The permit provides for the protection of water quality and site specific flexibility.

11. A few commenters stated the opinion that shorter, clearer permits which were easier to comply with would produce more compliance, and therefore, provide more environmental protection. Many commenters suggested that EPA use incentives for environmental protection instead of burdensome regulations.

Region 6 has worked with the public, the regulated producer groups, state and federal agencies to insure that this permit will be protective of water quality and will still be clear to the permittee. In addition, Region 6 has made a considerable effort through workshops/public hearings and this responsiveness summary that the regulated public understand the permit conditions. Region 6 believes that the regulated public will understand and comply with the terms of this general permit.

12. Many owner/operators and producer groups requested that the permit be re-proposed as draft or submitted to the CAFO industry to review prior to final issuance. When EPA makes substantial changes to the permit requirements, the Agency may elect to provide an additional public comment period on the changes. EPA has made only minor changes to the draft permit. Region 6 has attempted to make both the format and the language of the permit clearer. The requirements of "no discharge", Best Management Practices and the documentation of a Pollution Plan remain the same. EPA will not be re-proposing a draft permit. The permit will become final 30 days after the date of publication in the **Federal Register**.

13. Some person were concerned that more government professionals would have to be hired at considerable salaries to enforce the requirements in the permit. Others suggested the EPA should utilize the idea proposed in Texas to utilize state health inspectors for water quality assessment. Health inspector's on average, visit these facilities once per month.

Congress authorizes EPA's operating budget. EPA assumes the responsibility of apportioning its' budget to best address society's challenges to water quality. Information from the States will help Region 6 determine its inspection priorities.

14. Many comments were received expressing concern that many of the water quality problems associated with animal feeding operations were a result of smaller, unregulated facilities. Many commenters note that these guidelines and requirements apply to the larger facilities, and requested that EPA develop regulatory guidelines for small facilities which do not fall under the regulation of this permit. Several concerned citizens expressed the opinion that the Bosque River Basin watershed was over populated by dairy and cattle operations; and that this concentrations of operations was unique to this watershed. These citizens requested that this watershed be excluded from the general permit and be required to obtain individual permits in order to protect surface water and ground water resources.

EPA agrees that, of the watersheds which are impaired by animal wastes, the majority of the operations in those

watersheds are not specifically listed as point sources in 40 CFR 122.23. This may indicate that non-point source facilities are significant contributors to water quality impairments. However small facilities can be designated as a "point source" by the Director after a site assessment has been done, and can be regulated using this permit or another permitting action.

EPA does not believe that the Bosque River watershed is unique in Region 6. There are several watersheds in Region 6 which are heavily populated by animal feeding operations and which have impaired water quality. A review of these watersheds with State water quality officials indicates that the water quality impairment is likely to result of many factors. These factors would include the number, types and sizes of facilities, the nature of the watershed, the climatic conditions of the area, as well as, contributions from unregulated facilities and non-compliance problems. EPA believes that the first step in protecting the water quality in these watersheds and others in the Region from water quality impairments from animal wastes is the issue of this general permit. This will provide stringent requirements which are protective of water quality, and at the same time provides EPA with a strong enforcement tool against non-compliance. EPA points out that the issuance of this general permit does not preclude the Director from requiring facilities on the Bosque watershed to apply for an individual permit. Region 6 is also concerned about the animal waste contributions of the non-point sources on regional watersheds. For this reason Region 6 is an active participant of the national workgroup to study EPA's activities and its regulation of CAFOs.

15. Many commenters questioned why Region 6 has "linked" the Storm Water NPDES program with Concentrated Animal Feeding Operations (CAFOs). Several operators and producer associations believe that CAFOs are exempt from the Storm Water Program because their Standard Industrial Classification (SIC) code is 0211. Several commenters requested clarification of the reference to the Storm Water Program which requires facilities covered by the program to "at a minimum obtain coverage under a general permit promulgated for storm water".

The regulations which were published November 16, 1990 (55 FR 47990) require specific industries to apply for NPDES permits which cover storm water discharges. The final regulation listed 14 categories of industries which have "storm water discharges associated with industrial activity" which require permitting. Category 1 of the storm water regulations included all facilities which have National Effluent Guidelines. Feedlots (facilities with concentrations of 1000 animal units or more) have National Effluent Guidelines listed at 40 CFR 412. These facilities were required to apply for their storm water related discharges on or before October 1, 1992 or gain coverage under a permit which has been issued to cover storm water discharge requirements. EPA has included the technology requirements published for storm water discharges in the general permit for CAFOs. This general permit includes permitting requirements based on the effluent guidelines for process waters (all produced waters and runoff from the areas of animal confinement) and Pollution Prevention Plan to address requirements for all storm water related discharges. This general permit satisfies all permitting requirements for the feedlot industry and CAFOs.

16. Several comments received requested a definition of storm water runoff. Storm water runoff includes runoff caused by rainfall, snowmelt, or drainage which flows overland instead of percolation into the soils due to saturation. This term is no longer included in the CAFO general permit.

17. Many commenters who understood the coverage and technology requirements of the storm water program were concerned that the storm water permitting strategy as outlined by EPA would cause storm water minimum requirements to be in the process of change for several years, and that this would require that the regulated public under this program to be "shooting at a moving target" when trying to construct or meet permitting requirements.

It is true that the requirements for storm water discharges from many industries are still being developed. However, the technology standard applied to feedlot operations is very protective of water quality and has been in place since 1974.

18. Many commenters noted that the economic analysis for the national effluent guidelines was done twenty years ago. Several persons stated that the original cost of construction was estimated at $24,000–28,000, and that the cost of constructing the same structures today are much higher (estimated at $100,000). Many persons requested that an economic analysis be done to determine the cost of the proposed permit requirements. The regulated public expressed concern that the cost of compliance with the permit technology and recordkeeping requirements would be a serious burden on the family owned facilities. Several commenters noted that the cost of the Texas permitting program had cost dairies up to $200 per cow. They estimated that the requirements in the proposed permit would cost dairies $300 per cow. Many persons expressed the opinion that the state regulatory programs were adequate; and that a federal permit was duplication and a waste of tax dollars. A few commenters point out that the Labor Statistics Board noted the agriculture industry as having a 5% increase in employment while all other industries have dropped. These commenters state that agribusiness supports many employees and related businesses, and an economic impact on the dairy industry will have an economic impact on the national economy. Commenters asked if the Agency had taken into account the effect this permit would have on small businesses. These commenters reminded EPA of the current Administrations efforts to reduce the regulatory burden on small business. They explain that this additional cost of doing business would drive up costs and have a detrimental effect on the nations economy.

Challenges to the requirements established in effluent guidelines must be made when the guidelines are publicly noticed. In issuing a permitting action, EPA is under no obligation to defend either the technology or the economic analysis done in establishing an existing effluent guideline or new source performance standard. However, Region 6 has provided information in this responsiveness summary which compares the current status of the economic impact to the economic analysis which was published with the guidelines. Region 6 has also made an attempt to include the impact of the required Best Management Practices and Pollution Prevention Plan. The July 22, 1992 draft notice summarized EPA's belief that this permit would be more economically beneficial to the regulated community than the individual application process.

The Clean Water Act requires that EPA consider a "no discharge" technology where it is feasible when establishing effluent guidelines for industries. In the economic analysis that was done in the early 1970's it was established that the waste products generated by concentrated animal feeding operations were reusable resources and need not be discharged into waters of the U.S. The original economic analysis for construction of the basic technology was done when the BAT requirements for the national

effluent guidelines (40 CFR part 412) were published in February of 1974.

Several commenters indicated that the original economic analysis was no longer realistic to determine economic impacts on Concentrated Animal Feeding Operations. In addition, several commenters felt that the cost of these draft requirements would be so burdensome as to force them to discontinue their operations. Several commenters felt that the economic impact of discontinuing these operations would be even more severe for the communities in which they operate. In response, the Agency performed updated cost estimates (using November 1992 dollar values) for the improvements required for various concentrated animal feeding operations, using installation and cost information provided by the Soil Conservation Service, Tarleton State University Institute for Applied Research, and the Texas Agricultural Extension Service.

These comparisons indicate that the costs originally developed were reasonable and realistic for today. Table 1 gives a summary of these cost estimates, with a range of approximate values, from basic, minimum requirements to full installation of all best available technology, for various operations.

TABLE 1—APPROXIMATE COST ESTIMATES FOR WASTE STORAGE PONDS, DIVERSIONS AND MONITORING

Type of operation	Cost for medium size operation	Cost for large size operation
Dairy	200 head—$20,000.	700 head—$65,000.
Beef	300 head—$40,000.	1,000 head—$70,000.
Swine	750 head—$40,000.	2,500 head—$65,000.
Poultry	9,000 birds—$85,000.	100,000 birds—$165,000.

The cost estimates developed when the original regulations were promulgated in 1974 were approximately $24,000 to $28,000 for installation of a comparable "no discharge technology" type of system. These costs established in 1974, when extrapolated to 1992 dollars using the standard Engineering News Record cost indexes for construction of this type of waste management facility, increased to approximately $98,000. The cost estimates shown in Table 1 were developed from current cost information (1992 dollars) for these types of facilities. This comparison clearly shows that the cost estimates are well within the original estimates for the installation of the required technology.

Information has been received from other environmental professionals, currently engaged in providing these services, on the costs associated with improvements based on the requirements of the draft regulations. This information indicates that these cost estimates are within the range of reasonable and realistic costs for these types of available technology. One report prepared by an individual had costs for specific items that were up to ten times the current costs for these available services, and had many items listed in their costs estimates (e.g. on-site dewatering equipment, application prepared by an engineer, plastic covers for manure piles, etc.) that are not required under the requirements of this final permit. Even with all of these extra unnecessary costs added into the estimate, the economic impact was an increase of less than 4 percent over current costs under existing state regulations.

EPA provides economic analyses in establishing a requirement of a new technology. EPA is not required to provide an economic analysis for the best management practices (BMP's) or recordkeeping included in permits to insure the compliance with effluent limitations and a record of that compliance. However, Region 6 recognizes that the cost of compliance with the management practices and recordkeeping requirements of the permit constitute an additional cost to the permittee. Region 6 has made a sincere effort to reduce the burden of these requirements by reducing and/or modifying many of these where water quality will not be compromised.

The pollution prevention plan required by the final permit will have several components, including a site map of the facility (existing maps or U.S.G.S. maps may be used), a list of the potential pollutant sources, size of retention capacity and site specific factors, construction specifications, information on direct hydrologic connections, land application rates and calculations, waste handling procedures, and recordkeeping requirements. Cost estimates provided by environmental professionals for drawing this information together and developing a pollution prevention plan range begin at approximately $2500 and increase, depending on the amount of work involved. However, these estimates were based on the Pollution Prevention Plan (PPP) which was published with the proposed permit which included more documentation than the PPP in the final permit.

Region 6 believes that some of the documentation and all of the recordkeeping can be prepared by the operator at little expense. Much of this information is already required by state specific programs, and therefore the pollution prevention plan is a vehicle to compile the pertinent information and determine the additional measures that will be required to reach compliance with this final permit. There is no requirement that a Professional Engineer prepare the pollution prevention plan. It may be prepared by a representative of the Soil Conservation Service, an Engineer or other environmental professional, or, in many cases, the facility operator himself. The pollution prevention plan must include all components listed in the requirements of this final permit, much of which will be provided by the facility operator anyway. The facility operator may choose to compile this information and develop the pollution prevention plan himself, thus reducing the cost even further. The recordkeeping requirements are for documentation of ongoing implementation of this final permit, and should be done by the facility operator and staff. The cost of additional outside professionals should not be required to provide this information. Several commenters indicated that no other state or region had requirements as strict as those required in the draft permit. In response, the Agency believes that the requirements listed in the draft permit reflect the regulations as they are now in place, and as they have been since the national effluent guidelines were promulgated in 1974. Many of the best management practices and pollution prevention plan requirements reflect the best technology available as developed in 1991 in the storm water program.

In addition, there are several states that have requirements as strict or even stricter than the minimum requirements set forth in the draft permit. In a report, "Livestock and Poultry Waste Management: Problems and Solutions," prepared for the Office of Policy, Planning and Evaluation, U.S. Environmental Protection Agency, in May 1991, summaries of several state programs indicate that Ohio, Oregon and Florida all have programs that reflect more stringent requirements. Additional states, such as California and Kansas, also have requirements as strict or stricter than the Agency's requirements for this permit.

While EPA does not wish to place an economic burden on the meat, poultry, and dairy industries, it must remind the regulated public that permitting responsibility and the retention technology for these industries were established as regulations almost 20 years ago. Those facilities which remain

unpermitted and without the retention capacity to retain the 25 year, 24 hour storm event have been in violation of federal law since 1976 or for the life of their business, which ever came later. These facilities which have been noncompliant with the requirements of the regulations and the Clean Water Act have enjoyed an economic benefit over other facilities which have complied with the established requirements.

19. Many commenters expressed concerns over how this permit conforms with the Paperwork Reduction Act and the Regulatory Flexibility Act. Some commenters questioned how the Agency could state that this permit would be less paperwork and how it would create an economic benefit for the regulated community. In addition, several commenters were concerned about the effect of this permit on small businesses.

EPA's action in today's permit does not require EPA to perform additional activities under the Paperwork Reduction Act. The Agency notes that, while some paperwork is required in order to meet the requirements of this final permit, it is substantially less than the amount of paperwork required to file an application and comply with an individual National Permit Discharge Elimination System (NPDES) permit. Permits are required for these facilities under the Clean Water Act of 1972, and the two vehicles available for permitting are this General Permit and an individual permit. Individual permitting is very time-consuming for both the applicant and the Agency, and requires much more paperwork, effort and expense for the applicant. In addition, the documentation requirements of the General Permit for pollution prevention activities are the minimum acceptable requirements to the Agency for any industrial permit for CAFOs and would also be included in any individual permit issued for a concentrated animal feeding operation. Thus, compliance with this final permit does reflect the principles of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, as well as providing an economic benefit in the form of reduced costs for application and compliance. The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES effluent guidelines and the storm water programs under provisions of the Clean Water Act.

Section of the Regulatory Flexibility Act, requires that the Agency assess the impact of rules on small entities. The regulatory definition of Concentrated Animal Feeding Operations promulgated by EPA in 1976 (40 CFR part 122, appendix B) addresses medium and large operations (300 slaughter cattle, 200 dairy cattle, 750 swine, 150 horses, 3000 sheep or lambs, 16,000 turkeys, 9000 laying hens or broilers, 1500 ducks, or 300 animal units, or more). Therefore, this permit excludes small businesses with operations of less than these numbers of animals, unless specifically designated by the Director. The Director would evaluate these factors as well as potential impacts to water quality of surface waters of the U.S. or significant contributions of pollutants to those waters, in the designation process.

B. Comments on Part I of the General Permit—Coverage and Eligibility

1. From the comments received it is apparent that many persons may be confused about the definition of a Concentrated Animal Feeding Operation as a point source of pollutants requiring an NPDES permit. Some comments questioned if pasture areas were subject to regulation.

The regulatory definition found at 40 CFR 122.23 and part 122 appendix B encompasses all animal operations which have industrial characteristics. The definition "concentrated animal feeding operation" includes the number of animals confined; the length of time the animals are confined at the facility; and the type of the confinement. The definition does not include areas of the facility where crops or forage crops are maintained throughout the growing season. The definition is included in the Part VII. of the general permit.

2. Several comments received voiced disagreement with the appropriateness of the phrase "confined in pasture operations".

Confined in pasture operations represents the restriction of pastured animals by a fence, wall, natural impasse or other such barrier to prevent these animals from free movement off of property or pasture. Confinement of animals on pasture lands are not regulated under this permit. This general permit regulated the pollutants from areas where animals are confined in concentrated situations.

3. Many persons requested that EPA explain the significance of the "Alta Verde" court decision, and how that relates to the exemption from NPDES requirements for those facilities which do not discharge. Some persons believe that the decision in this case removes the incentive for facilities to "over build" to avoid permitting requirements, and therefore, the extra environmental protection of a system that truly never discharges. Several commenters believed that the retention capacity design to contain the 25 year, 24 hour storm event excluded a facility from NPDES permitting requirements.

It is not within the scope of EPA's authority to determine the significance of the courts ruling in the *Alta Verde* case. In the *Alta Verde* case the courts ruled that a retention structure which was built to retain all runoff from the 25 year, 24 hour storm event was not exempted from obtaining an NPDES permit, and that all discharges from such a facility would be considered in violation unless in compliance with an NPDES permit. Region 6 believes the *Alta Verde* case corroborates the explanation given by Region 6 in the preamble of the proposed permit published July 22, 1992 (57 FR 32475). Where a facility has built a retention system which has the capacity to retain the 25 year, 24 hour storm event, and the facility maintains that capacity properly, any discharges due to the occurrence of extreme rainfall events will not be a violation of the Clean Water Act if those discharges are in compliance with an NPDES permit. The regulations at 40 CFR part 122 appendix B state that if a facility discharges only in the event of the 25 year, 24 hour storm event, then the facility is not considered to be a point source discharger. This means the only discharges which can be discharged without violating the CWA are those in compliance with an NPDES permit, or as a result of the statistical event which happens only about once every 25 years. The Court in *Alta Verde* ruled that the design capacity of the retention structure is irrelevant in determining Clean Water Act jurisdiction. It is not possible for a facility to predict with certainty the design capacity needed to retain the volume from largest secession of chronic rainfall events that may occur between 25 year, 24 hour events (approximately a 25 year period).

4. Many persons requested clarification on whether the definition includes stockyards facilities. These commenters contend that these operations do not generate much wastes and that the requirements in the permit would put an economic hardship on these businesses. Several commenters requested that EPA add the word "consecutive" to the reference to 45 days in the definition. One commenter requested that the definition be changed to include facilities on which animals were fed and maintained for 29 days out of a 12 month period.

The definition requires EPA to regulate facilities through NPDES permitting if animals are on the facility for 45 days or more out of a 12 month period. Region 6 believes strongly that

it is clearly the intent of the regulation to include feedyards and stock yards which have animals maintained and fed for 45 days a year at the facilities. It is irrelevant whether they are the same animals for the 45 day duration, or whether it is a consecutive 45 days. It is beyond the scope of Region 6's authority to amend a promulgated regulation.

5. Many persons and producer groups requested clarification on the terms "continuous flow watering systems" and "liquid manure handling systems" to determine which poultry operations will be subject to permitting under NPDES.

Poultry facilities which have no discharge at all to waters of the U.S. are not point sources under the regulatory definition (40 CFR 122.23 and 122 appendix B) and are not required to obtain NPDES permits. This describes poultry houses which are exclusively under roof, which have no liquid or fluid wastewaters, and which removes or distributes all solid wastes and manure to proper agricultural uses shortly after collection. However, Region 6 believes that facilities which are described in the regulatory definition as a point source, i.e., have a process water discharge, must have an NPDES permit. This includes those facilities which stockpile or land dispose of manure such that rainwater or the adjacent watercourse removes significant amounts of pollutants to waters of the U.S. These facilities have, in fact, established a crude liquid manure handling system and are considered to be point source dischargers if the number of animals confined at the facility meets the regulatory definition of concentrated animal feeding operations.

6. Many persons supported the concept of general permit coverage with the no submittal of a notice of intent to the Director. However, many persons, state and federal agencies expressed concern that EPA would not have a record of the permittees for enforcement of the permit. Many commenters stated that if EPA was not going to track the permittees directly, it should not impose the program and leave CAFO regulation up to the states.

Region 6 agrees that a Notice of Intent is an appropriate tool in confirming which facilities are covered by the terms and conditions of the general permit. Region 6 is including a NOI form as appendix B of the general permit. EPA believes this will enhance the Region's ability to track and enforce the terms of the general permit.

7. Many persons requested that facilities which have applied to Region 6 for an NPDES permit prior to the issuance of the general permit be granted coverage under the permit when it is issued. And, that the coverage extend retroactively back to the date the application was submitted.

In accordance with Part I.B.3. of the general permit facilities which have applied for an NPDES permit will be covered automatically by this permit. However, EPA cannot extend the authority of an NPDES permit into the past and is not able to cover facilities from the time of application. The Clean Water Act requires that any discharge be in accordance with an NPDES permit. This is why a permit application is to be filed 180 days prior to discharging into waters of the U.S.

8. Many comments expressed concern that permit coverage was only for a five year term. Facility owners and bankers stated that it would be impossible for facilities to obtain loans on a facility if its environmental requirements could change in five years. Sections 402(b)(1)(B) of the Clean Water Act and U.S. Code section 1342(b)(1)(B) requires that permits under NPDES be issued for a fixed term not to exceed five (5) years. Federal regulations found at 40 CFR 122.46(a) clearly state that NPDES permits are effective for a fixed term not to exceed 5 years. EPA can require that a permit be renewed more frequently, but cannot extend the duration beyond the 5 years. All NPDES permittees, which include many different categories of industries, have addressed the budgetary concerns of meeting permit limitations which may change after a 5 year term since the inception of the NPDES program in 1972.

9. Several comments were received regarding the coverage of duck facilities after 1974. The commenters felt this only added confusion to the requirements and further, that they had no knowledge of any duck facilities in any of the four states covered by the permit. EPA has reason to believe that there are some duck breeding facilities in the Region. In addition, this general permit will provide requirements for any new facilities which may begin operation in the future.

10. The U.S. Fish and Wildlife Service requested that EPA participate in a meeting to discuss and evaluate environmental impact data gathered by the Fish and Wildlife Service. While being supportive of the general permit, Fish and Wildlife suggested additional permitting requirements to insure the protection of endangered and threatened species and their habitat.

EPA met with and discussed data obtained by the U.S. Fish and Wildlife Service and discussed several permitting requirements to insure impacts to endangered and threatened species were addressed. Region 6 included several requirements to the final permit to insure compliance with the Endangered and Threatened Species Act. No facility can gain coverage under this general permit if there would be any adverse impacts to an endangered or threatened species or their habitat. Several permit requirements were added in response to comments by several entities and agencies. It was the Best Professional Judgement of EPA that these requirements be included in the permit to insure that all impacts be properly addressed. Among these are: 1. The permittee will immediately report any fish or bird kills to the Fish and Wildlife office nearest to the facility; 2. A site specific rain gauge will be required to establish permit compliance; 3. Notice of intent be required of the facilities to be covered; and 4. The use of pasture or crop lands to "filter" discharges prior to entering a water of the U.S. be allowed as a management practice for those facilities which are in danger of imminent discharge, even in the event of saturated conditions. EPA believes that the conditions of the final permit will be effective in preventing discharges and management practices from affecting fish and wildlife, including endangered species.

11. Many persons were confused with the terms used in the Agency's decision under the National Environmental Policy Act (NEPA); and terms used in the coverage portion of the general permit to describe the requirement of an environmental review prior to coverage for new facilities with Performance Standards for New Pollutant Sources (40 CFR Part 412). The terms commented on were: environmental review; environmental assessment or environmental evaluation; and environmental impact statement.

The term "environmental review" will be included in the permit's definition section to give a regulatory definition of the process the Agency uses in its evaluation under the National Environmental Policy Act. The terms "review", "assessment", and "evaluation" are distinct phases associated with the NEPA process, their meaning being the same as would appear in a common dictionary. However, the following definitions are provided to clarify the terms as used by EPA.

An *environmental review* is defined at 40 CFR 6.101(c) as the process whereby an evaluation of the environmental information provided by the permit applicant is undertaken by EPA to identify and evaluate the related

environmental impacts to determine if there will be an significant impact to the environment from the new facility. The EPA is required by law to conduct this environmental review prior to issuing any permit to a facility with New Source Performance Standards. These standards have been through the regulatory review process and apply to any facility constructed after the standard became a regulation. The Agency is prohibited from permitting any discharge with new source standards unless the review has been done and a finding has been made.

The terms *environmental assessment and environmental evaluation* are defined at 40 CFR 6.105(d) as concise public documents for which EPA is responsible and are prepared to provide sufficient data and analysis to determine whether an *Environmental Impact Statement* (EIS) or *Finding of No Significant Impact* (FNSI or FONSI) is required. When the environmental review indicates that there are no significant impacts anticipated or when the project is altered to eliminate any significant adverse impacts, a FNSI shall be issued and made available to the public. The FNSI shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable. The public is allowed to comment on the Agency's finding, and to provide information either supporting the FNSI or to the contrary during the permit public comment period.

The Agency, however, may determine that it must prepare a *Notice of Intent and Environmental Impact Statement.* This process is described at 40 CFR 6.105(e). When the environmental review indicates that a significant impact may occur and significant adverse impacts cannot be eliminated by making changes in the project, a notice of intent to prepare an EIS shall be published in the **Federal Register.** Draft and final EIS shall be prepared and disseminated. The final EIS shall list any mitigation measures necessary to make the alternative environmentally acceptable.

EPA would like to caution operators that the decisions described above must go to Public Notice for a minimum of 30 days prior to a final decision being made. The entire process can take several months to complete. An Environmental assessment and review should be initiated by the permittee several months in advance of constructing a new facility or expansion of a facility to over 100 animal units (part a. of the regulatory definition at 40 CFR part 122 appendix B or, part a. of the regulatory definition that is included in Part VII. of this permit).

12. Many persons commented on the need for an Environmental Impact Statement for discharges from CAFOs. Some comments questioned the need for an Environmental Impact Statement (EIS) indicating that the cost of an EIS would place a severe economic burden on the regulated facilities. Many persons expressed concern that the economic burden would discourage new businesses or expansion of existing businesses.

The Agency is required by law to prepare an EIS where it finds that significant environmental impacts may occur as a result of the new facility. In this case, all CAFOs with 1000 animal units or more (part a. of the regulatory definition that is included in Part VII. of this permit) that have been constructed since February of 1974 are considered to be the "new sources" which have new source performance standards. The EPA is mandated to regulate in accordance with the authority provided to it by Congress and is not authorized to circumvent the law regardless of its economic impact.

13. Some comments expressed disagreement with the Finding Of No Significant Impact which was published with the proposed general permit. Some of these comments cited water quality reports for the Erath and Bosque County areas. The commenters believed that due to the concentration of CAFOs in this area the water quality impacts from discharges from the retainment structures would constitute a significant impact and that CAFOs on the Bosque River Basin watershed should be evaluated in an Environmental Impact Statement. Several letters expressed the opinion that EPA had not sufficiently evaluated the potential impacts in this watershed, and had made judgments based on insufficient study of the known water quality problems in the area. In addition, these commenters stated the opinion that EPA's use of a general permit to regulate all CAFOs was inappropriate. These commenters believe that Erath County, Texas should be excluded from the general permit. It was the stated opinion of these commenters that EPA had not adequately addressed water quality, drinking water aquifers, closure of facilities, and odor control.

While EPA agrees with commenters that animal wastes have had an impact on this watershed (see answer A. 14.), Region 6 believes that the Finding of No Significant Impact is appropriate for the facilities which are already in operation and which will be compliant with the permit requirements. The permit requirements are considered to mitigate for any water quality impacts since the new source performance standards were developed to insure an environmentally safe discharge and the effluent limits of no discharge take into account the state water quality standards for the receiving stream.

In preparing the proposed permit, a list of possible impacts from CAFO facilities was compiled from various sources to determine the potential environmental impacts from concentrated animal feeding and maintenance operation activities. Among these impacts are: (1) Surface water quality impacts from discharges and the handling of the wastes generated at the site; (2) groundwater impacts caused by seepage from the retention lagoons and over-application of the wastes to land; (3) endangerment to public health by the contamination of drinking water by the animal wastes which are generated at these facilities; (4) public health nuisance caused by odors and the resulting attraction of insects to the area; (5) adverse effects to endangered species and other wildlife by the location or by the land application, disposal, or management of the animal wastes; and (6) air quality impacts from the contribution of methane and other gases which are associated with the management and storage of animal wastes.

These impacts were evaluated in the development phase of writing the draft general permit. The general permit proposed in July included many requirements to mitigate or control the environmental impacts associated with CAFOs. Based on the information mentioned above, the Agency evaluated agricultural information, state water quality inventories and reports, and national information on water quality problems associated with animal waste management. It was the finding of the Environmental Services Division at Region 6, that the conditions of the permit and the effluent guidelines provided adequate requirements to control, or mitigate all significant impacts from Concentrated Animal Feeding Operations which were already constructed and operating.

It is the finding of Region 6 that the most frequent water quality and environmental impacts are those associated with the land disposal of wastes generated by CAFO facilities. EPA has included specific requirements in the proposed permit to regulate the waste disposal activities. Additionally, the environmental assessment indicates that overflows from the wastewater containments can be controlled by frequent removal of concentrated wastewaters and diversion of rain waters. Also, discharges from properly

operated facilities contain significantly less pollutants than a facility which has been improperly operated and wastes have been allowed to accumulate in the retention structure. Region 6 believes that it is the accumulation of wastes which would result in a more concentrated and frequent discharge that would cause environmental damage. The proposed permit includes the necessary mitigation recordkeeping and monitoring to determine if the discharges are in compliance with the permit requirements for proper operation and management.

The Clean Water does not give EPA the specific authority to address ground water and facility closure requirements for CAFOs (see answer D.25. for a discussion of the closure requirements). However, Region 6 believes that the pollution prevention and required management practices under the permit are protective of ground water quality. To the extent that there is protection under more stringent State statutes, the permit protects drinking water. The permit provides stringent requirements which are protective of water quality, and at the same time provides EPA with a strong enforcement tool against non-compliance.

Region 6 is aware that these facilities have contributed to significant water quality problems in areas where these facilities are concentrated on a particular watershed. EPA has considered all available information to determine if more stringent permit conditions are needed. Region 6 believes that the water quality impairments in the Bosque River Basin are mostly attributable to non-point sources and non-compliance with the current state program. It is the finding of this Agency that facilities which are operating in compliance with this general permit will not have a significant impact on the environment. It is the determination of this Agency that the permit conditions of "no discharge" coupled with the required best management practices and pollution prevention will be protective of State water quality standards. If facilities covered by this general permit are found to contribute to water quality impairments the permit may be reopened to include more stringent program elements, or the facilities may be required to apply for individual site specific water quality based permits.

14. One commenter requested that EPA place strict siting requirements in the permit which would eliminate all CAFOs in the Region.

EPA does not have the authority to require a six mile separation from all private residences and public buildings and areas, nor does the Clean Water Act provide the authority to EPA to eliminate business. The authority under which EPA operates, is limited to the regulation of discharges of pollutants to surface waters of the U.S.

15. Many comments were received requesting EPA define such terms as "alternative general permit" "individual permit" and "this general permit" which are used in Part I.D. of the general permit. These terms were in the proposed general permit preamble, fact sheet, and permit. The section of the permit containing the bulk of these terms has been restructured for clarification. EPA regrets any confusion about the regulatory language in this part of the general permit. Where ever the term 'this permit' appears it means this general permit which was proposed on July 22, 1992. General permit is a term which describes a permit which is intended to cover a large group of permittees with one permit; this avoids the administrative and resource burdens involved in individual permit issuance. Alternative general permit, alternative NPDES general permit, and individual NPDES permit all refer to a permitting action separate from this general permit which may be required in the vent that coverage by this permit is not adequate.

Simply stated this provision means that EPA has the authority, based on its judgement, to determine the appropriateness of this general permit with regards to any particular facility. If, based on site specific conditions, or water quality concerns, EPA believes that this general permit does not provide adequate requirements, EPA can require the facility to apply for an individual permit, or a different general permit. An application for an individual permit requires site specific information so that a more site specific permit can be developed which addresses the water quality concerns at that individual facility. Or, it may be the determination of EPA that a different general permit would provide more appropriate controls for the facility. If this is the case, the Director could require the facility owner/operator to apply for, and then comply with the other general permit.

C. Comments on Part II of the General Permit—Effluent Limitations

1. Many comments received requested information on the technical information used to develop the Effluent Guidelines for feedlots, and the basis for the application of these guidelines to concentrated animal feeding operations. The information requested is contained in the Development Document for Effluent Limitations and New Source Performance Standards—Feedlot Point Source Category. Published January 1974. This document is no longer for sale through the U.S. Government Printing Office, but can be reviewed at a Government Repository Library. Most large city libraries, State libraries, and University libraries provide an area for government documents, and as such are Government Repository libraries. In preparation of a permit for feedlots EPA must, at a minimum include the technology requirements established in the effluent guidelines. The effluent guidelines apply to all CAFOs of 1000 animal units or more (feedlots). Region 6, in preparation of the proposed permit, reviewed possible permitting requirements which would be protective of State water quality standards. It was the best professional judgement of EPA that the effluent guidelines would be minimum technology requirement which could be placed in a general permit which would be protective of water quality. Therefore, EPA has applied the effluent guideline technology to all facilities covered under the general permit. While this may appear to some persons to be placing a more stringent requirement on the facilities which have less than 1000 animal units, these smaller facilities have the permitting option of applying for a site specific individual permit. It is the belief of Region 6 that the cost of other treatment options which would be protective of water quality would be more expensive than the requirements in the general permit. It is the opinion of Region 6 that this general permit provides the most cost effective permitting option for facilities under 1000 animal units which are subject to Clean Water Act requirements.

2. Several comments received requested that the terms BAT and BCT be defined in the general permit. BAT, Best Available Technology applies to the control of toxic pollutants and pollutants which are not classified as toxic or conventional pollutants. BAT control of these pollutants is achievable through application of production processes and available methods, systems, and techniques. For this permit the required BAT, as described in 40 CFR 412.13, requires that there be no discharge of process waste water pollutants to navigable waters. The design standard requires the retention of all wastewaters and runoff from a 25 year, 24 hour storm event, and the proper operation and maintenance of the retention capacity. BCT, Best Practicable Control Technology applies to the control of conventional pollutants. The limitations established

in 40 CFR 412.22 define the quality and quantity of pollutants or pollutant properties, which may be discharged by a point source (CAFO) subject to the provisions of this subpart after application of BCT. The BAT requirement of "no discharge" meets all BCT standards for the control of conventional pollutants. EPA has included a definition of these terms in the definition section of the general permit (part VI).

3. Several comments were received requesting a definition of a 25-year, 24-hour storm event. This term is defined in part VII of this final permit. 25-year, 24-hour storm event is defined as the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments or equivalent regional or state rainfall probability information developed therefrom. This means that this storm event has a probability of occurring once every 25 years and includes the maximum precipitation occurring over a 24 hour period.

4. Several persons requested that EPA define "chronic" or "catastrophic" rainfall events. The terms chronic and catastrophic rainfall appear in the effluent guidelines requirement at 40 CFR part 412.

These refer to events which may result in an overflow of the required retention structure. Catastrophic rainfall conditions would mean any single event which would total the volume of the 25 year, 24 hour storm event. Catastrophic conditions could also include tornados, hurricanes or other catastrophic conditions which could cause overflow due to winds or mechanical damage. Chronic rainfall would be that series of wet weather conditions which would not provide opportunity for dewatering and which total the volume of the 25 year, 24 hour storm event.

5. Several concerned citizens were confused about the required technology established in the National Effluent Guidelines. It is the understanding of these citizens that properly sized facilities should discharge only in the event of the 25 year, 24 hour storm event. The effluent guidelines establish a requirement of "no discharge of process waste water pollutants from the facility". However, the guideline provides for no limitation to be placed on overflows from retention structures which are properly constructed and operated to maintain the capacity of the 25 year, 24 hour storm event. If chronic or catastrophic rainfall cause an overflow from a facility which has been operated to maintain the required volume capacity, then that overflow is in compliance with effluent guidelines and this permit.

A facility which only discharges in the case of the actual 25 year, 24 hour storm event is excluded from the definition of concentrated animal feeding operation (40 CFR 122.23 and part 122 appendix B) and is, therefore, not considered a point source discharger subject to NPDES permit requirements under the Act.

6. Several commenters were concerned that the National Effluent Standards for CAFOs were more stringent than the State Standards. The Clean Water Act requires that States set water quality standards. Where these state standards are more stringent than the national technology requirements, EPA is required to use the more stringent standard. EPA cannot be less stringent than the national technology standard in the development of NPDES permits. (Also see answers A.4–9.)

7. Several comments received requested a definition of "all process waste water". Process waste water refers to any process generated waste water and any precipitation which comes into contact with any manure, litter, or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animal or poultry or direct products (e.g., milk, eggs). Process generated waste water is defined as water directly or indirectly used in the operation of a CAFO for any or all of the following including but not limited to: Spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other feedlot facilities; direct contact swimming, washing, or spray cooling of animals; and dust control. This definition is included in the definition section of the CAFO general permit, part VII.

8. The U.S. Fish and Wildlife Service submitted comments expressing concern that playa lakes are being used as animal waste retention ponds at many CAFOs in the western U.S. to the detriment of migratory birds which use the same playas for loafing, feeding, and breeding. Many other commenters also questioned the use of playa lakes as retention structures for CAFOs, essentially contending they are waters of the U.S. to which the permit should prohibit discharges. Other commenters disagreed, however, noting that cleaning out a playa lake and building a new retention structure at the same facility would be very costly and probably would not provide any environmental benefit. One commenter stated the use of a playa lake is more environmentally sound because they are naturally lined with caliche and clay which protects ground water.

There is merit to each of these concerns. Many small playa lakes have historically been used as retention units by CAFOs with varying degree of environmental effect. Some have been rendered unfit for some of the uses which uncontaminated lakes enjoy. Conversely, some may have been improved, i.e., but for their use as a retention basin they would be dry much of the year and thus lack significant value as wildlife habitat. Some may have both adverse and beneficial effects on wildlife. In some instances, moreover, constructing an artificial retention pond to eliminate the use of the playa for wastewater retention might impose a severe economic burden on a CAFO operator without any significant environmental benefit. Wildlife currently attracted to the playa because of the wastewater it contains might well begin frequenting the artificial retention pond.

Moreover, there are difficult jurisdictional issues associated with playa lakes which EPA Region 6 cannot, as a practical matter, resolve in issuing these general permits. In accordance with EPA's regulatory definition of "waters of the U.S. at 40 CFR 122.2, a playa lake is a water of the U.S. if its "use, degradation or destruction could affect interstate or foreign commerce * * *." There are various types of commerce which may be affected by the degradation of many playa lakes, but EPA has to date asserted jurisdiction over them only on a case-by-case basis, generally in the context of enforcement actions. It is fair to say, however, that EPA Region 6 generally regards playa lakes supporting significant migratory bird use to the waters of the U.S.

40 CFR 122.2, however, also excludes "waste treatment systems" from its definition of "waters of the U.S." Although a portion of that regulation prohibits the use of naturally occurring waters from the ambit of the waste treatment system exclusion, that same portion has been stayed since July 1980, when EPA indicated it would "promptly" reconsider issues associated with the prohibition. See 45 FR 48680. Accordingly, a specific playa may be a waste treatment system over which EPA does not assert jurisdiction even though it would otherwise be a water of the U.S. Until the Agency promulgates a regulatory clarification, determining whether or not a specific playa is a water of the U.S. or a waste treatment system is another case-by-case process.

Moreover, because many playas are hydrologically isolated from other waters of the U.S., a *sine qua non* for a waste treatment system, there are many cases in which the jurisdictional issue is a close one.

Because dischargers are responsible for compliance with CWA section 301(a) regardless of whether or not EPA has made a prior determination on the jurisdictional status of a particular receiving water, EPA may occasionally bring an enforcement action for unauthorized discharges to a water body the discharger regarded as its waste treatment system. Although each case must be determined individually, EPA Region 6 may consider the following non-exclusive factors in deciding whether specific playas are treatment systems or waters of the U.S.:

a. *Hydrologic separation.* At a minimum, all waste treatment systems must segregate wastewater from other waters of the U.S., allowing the operator to maintain dominion over the waste prior to its discharge to waters of the U.S. In the case of playas which are naturally segregated from other waters, capacity of the playa thus becomes an important consideration. Using more playa than reasonably necessary for treating or retaining anticipated volumes of wastewater indicates the operator has not attempted to segregate its wastewater from other waters of the U.S., e.g., through construction of a watertight berm across the playa.

b. *Public access and multiple dischargers.* A surface water used or susceptible to use by various parties is rarely a waste treatment system because such use may interfere with or be incompatible with its use as a waste treatment system. Accordingly, a playa over which the discharger cannot or does not exercise exclusive control will generally be regarded as a water of the U.S., not a waste treatment system. It should be noted that discharges are a type of use. Because one wastestream may interfere with another's treatment, a playa receiving more than one entity's discharge is probably no entity's waste treatment system, but a water of the U.S. This might not apply to the case of two CAFOs with the same operations and wastes discharging to the same playa.

c. *Physical modifications.* Physical alteration of a natural playa to improve its ability to function as a waste treatment system provides an indication of waste treatment system status. As a corollary of sorts to the first factor listed above, for instance, increasing the capacity of a playa to accommodate waste treatment needs is a strong indication that the resulting surface water body is a waste treatment system, not a water of the U.S.

d. *Other waste treatment options.* The existence of a proven, practical, and preferable alternative treatment method for the waste stream at issue militates against a finding that a surface water body is a waste treatment system. Disposal via deep injection well, for example, is a proven method commonly used by onshore oil and gas operators for complying with EPA effluent guidelines applicable to produced water. Hence, EPA would be unlikely to find a playa lake was an oil and gas operator's waste treatment system. In the case of a CAFO, however, surface retention basins may sometimes be the only treatment/disposal option available.

e. *Consistency with state law.* Some states have adopted laws restricting or prohibiting the use of naturally occurring waters as waste treatment systems. If finding a water body is a waste treatment system is inconsistent with such laws, EPA Region 6 will consider it a water of the U.S. A state law or decision to allow use of a natural water body as a waste treatment system is not, however, a determinative factor in an EPA decision on the same issue.

f. *Individual Section 404 permit.* If the U.S. Army Corps of Engineers has issued a permit for the discharge of dredged or fill material to a playa lake incidental to a playa's use as a waste treatment system, EPA Region 6 will probably consider it a waste treatment system. The existence of a nationwide or general permit authorizing such work in a playa, however, will be given little if any weight because neither EPA nor state water quality agencies have an opportunity to consider individual waterbodies in connection with the issuance of such a permit.

EPA reiterates that these factors are neither exclusive nor regulatory; they are simply examples of the sort of factors EPA will probably apply in making individual determinations. Their application in the context of an administrative or judicial enforcement action may thus be challenged in that enforcement action. In an effort to place permittees on notice that discharges to playas may be considered discharges to waters of the U.S., however, EPA has amended the proposed permits' references to "waters of the U.S." by adding exemplary language regarding rivers, streams, lakes, wetlands, and playa lakes.

Even if a specific playa is clearly a waste treatment system, the operators of that system should make every effort to avoid damage to wildlife resources, such as migratory birds. Many migratory birds protected by the Migratory Bird Treaty Act and/or the Endangered Species Act may frequent surface water bodies, regardless of their jurisdictional status under the Clean Water Act. Harming such protected birds by operating a treatment system may subject the operator to significant criminal liability under those laws.

D. Comments on Part III of the General Permit—Special Conditions, Management Practices, and Other Non-Numeric Limitations

1. Many persons were concerned with the phrase "other than discharges associated with proper operation and maintenance of the CAFO" in Part III.A. Prohibitions. Several comments stated that pesticides should be considered as proper O&M, and that the dilution of pesticides in the ponds would render them harmless. The State of Texas asked if the disposal of "off spec" milk could be discharged to the retention structure.

The Agency wishes to stress that the retention technology with the allowance to overflow in extreme rainfall conditions can only be applied to the wastes associated with the operation and maintenance of a concentrated animal feeding operation. The disposal of other wastes in the ponds would be a violation of the regulatory requirement. The authority for this requirement is established in 40 CFR 122.45(h). The disposal of "off spec" milk is a part of the operation and maintenance of a dairy facility. Also, the use of pesticides, cleansers, disinfectants are common and often necessary to the operation of any animal feeding operation. Region 6 cautions operators to use pesticides judiciously and in accordance with label requirements. Where appropriate the operator should limit the use of pesticides, and use those which are more readily degraded. This could limit pesticide impacts on the environment and limit the need to do expensive pesticide testing if the retention structure should need to discharge. Region 6 does not believe that the dilution of pesticides in the retention structures will render them harmless. Many pesticides are very toxic to fish and wildlife in the parts per trillion range and do not break down readily.

Two examples of activities and wastes which are excluded by this provision are as follows: 1. The introduction of human wastewaters into the retention structure. The discharge and/or land application of materials that are potentially contaminated with human pathogens are covered by regulatory requirements in section 405 of the Clean Water Act. 2. The act of any operator to

accept any outside waste (waste not generated at the CAFO) to be introduced into the retention structure.

2. Several persons commented on the requirement to structurally restrict uncontaminated waters which may run on to the facility. Also many persons question the requirement for the facilities to be protected from flood if located in a floodplain. The Agency believes that unrestricted flow through the facility area would result in unnecessary and unplanned large volumes of water which would have to be retained. The Agency believes this practice would lead to frequent non-compliance. The Agency also believes that the protection from flood waters is consistent with the no discharge requirement for facilities which are located in floodplains. This provision applies to all waste management areas except the land application of wastes as an agricultural practice. Properly applied, animal wastes provide no more environmental risk than chemical fertilizers which would be used on the same land.

3. Several comments received concerned the placement of a waste retention facility near water wells. Many commenters requested EPA reword the requirement to clarify their intent. Several States requested that the distances reflect State health department standards.

EPA has clarified the Best Management Practice referring to the proximity of waste management facilities to water wells. (Part III.B.1.g.) It is EPA's responsibility to include any State requirement which would be more protective of public health in permitting actions. EPA agrees with States that these should be in accordance with the specific distances cited in the State's health codes, therefore, the best management practices restricting the placement of retention and waste handling facilities near public and private water wells has been changed to refer to the State's requirements.

4. Many persons and producer groups, especially groups from States outside Region 6, question EPA's authority to protect ground water in an NPDES permit. Clean Water Act specifically refers to ground water in three sections, however it does not give clear authority to EPA to regulate ground water quality through NPDES permits. Where States have requirements to protect ground water, or specifically refer to them as waters of the State which are to be protected in an approved Water Quality Management Plan, EPA is fully within its authority to protect ground water quality. EPA is authorized by section 301 of the Act include any more stringent state treatment standard or requirement. Region 6 has not included requirements to specifically protect ground water quality. The permit does, however, protect the sources of surface water from the leakage of pollutants through the unlined retention structures. This requirement along with best management requirements for the proper waste handling and disposal will have the added environmental benefit of providing some ground water protection. The permit also includes provisions which relate to the protection of public health from the contamination of drinking water as reflected in State Standards.

For clarification all mention of ground water protection has been removed from the general permit.

5. Many commenters objected to the requirement of recordkeeping in the general permit. Many people stated that it was too burdensome and that paperwork would not protect the environment. Several persons and producer groups supported some of the required recordkeeping. Specifically, logs of water levels, structural integrity inspections, and logs of manure removal from the facility. Several concerned citizens suggested that facilities should also keep records of all pesticide usage at the facility. Many persons stated the opinion that the recordkeeping requirements be eliminated and be replaced by annual or semi-annual inspections by EPA. Several Commenters believed that the inclusion of BMPs and the requirements in the Pollution Prevention Plan were beyond the scope of EPA's authority.

EPA has simplified and clarified the recordkeeping requirements in the permit. The records required are those which facilities must have to show compliance with the national standards. Many of the record requirements are provided by the USDA Soil Conservation Service. Region 6 does not believe that the recordkeeping required to document all pesticide usage is necessary to protect water quality. The permit requires that the permittee use pesticides in accordance with label requirements. In this was the use has already been regulated by EPA. The permit also requires the permittee to sample all discharges to waters of the U.S. for any pesticide which may be present in the discharge.

Region 6 regulates and permits close to 100,000 permittees. The staff required to do semi-annual inspections at every permitted facility in Region 6 would require a substantial increase to EPA's budget. This expenditure would have to be placed on the taxpayer in order to save the operators of facilities from the burden of their compliance recordkeeping. EPA does not agree that this is an appropriate use of tax dollars.

The Clean Water Act gives EPA broad authority to develop permit conditions necessary to meet effluent guidelines and water quality standards. Specifically, sections 401(a) (1) and (2) of the Act give EPA authority to prescribe conditions for permits to assure compliance with applicable regulations. Further, EPA has the authority to impose Best Management Practices (BMPs) as permit conditions to ensure that technology-based effluent limitations are properly implemented in permits. Additionally, it is EPA's best professional judgement that the BMPs and pollution prevention requirements are needed in the permit to protect for water quality.

Tracing EPA's statutory and regulatory authority to control wastewater discharges from CAFOs, federal regulations found at 40 CFR 122.44 state that NPDES permits must include technology-based effluent limitations based on limitations promulgated under section 301 of the Clean Water Act. Effluent limitations have been imposed on CAFOs by federal regulations found at 40 CFR part 412. The regulations at 40 CFR 122.44(k) state NPDES permit shall include Best Management Practices to control or abate the discharge of pollutants when numeric effluent limitations are infeasible or these practices are reasonably necessary to achieve effluent limitations and standards or to carry out the intent of the Clean Water Act. The regulations described for CAFOs at 40 CFR part 412 are not expressed as numeric limitations, and are clearly effluent limitations which can be implemented by the use of BMPs. EPA therefore believes that it has authority to require BMPs as a condition of the general CAFO permit and believes BMPs to be the appropriate vehicle for the protection of water quality.

6. Many comments were received requesting a compliance schedule for the development of the plan and compliance with provisions. EPA agrees that the smaller facilities under the general permit will require more time to prepare a plan. Facilities under 1000 animal units must be compliant with this provision as outlined in the schedule in Part III.B.2.a. of the final permit.

7. Many comments received requested that the permit allow Soil Conservation Service animal waste management plans to replace the pollution prevention documentation. Other commenters request that documentation of compliance with the waste management

provisions, retention structure design and construction, and liner determinations from the SCS be considered compliance with the pollution prevention requirements.

The proposed permit contained language which allowed documentation under SCS plans to substitute for parts of the pollution prevention plan. The Agency has amended the permit to include more specific language (in Part III.B.2.) concerning the substitution of SCS documentation/decisions for the permit requirements.

8. A few commenters questioned who would be considered "qualified personnel" for purposes of development of a Pollution Prevention Plan and responsibility for compliance with the provisions and recordkeeping. The owner or operator of the facility is responsible for designating this task to an employee, or doing it themselves. If the task is designated to a person other than the permittee, it is the permittees responsibility to determine the qualifications of the employee to understand and comply with the requirements. This person must be named in the plan.

9. A few persons objected to the requirement that all sampling data be kept on site. Sampling data is part of the permit compliance record of the and must be kept at the facility. EPA does not believe this places any burden on the permittee and allows EPA to evaluate permit compliance.

10. Most commenters were concerned with the requirement to have all of the necessary dewatering equipment "on site". The equipment is expensive and is often shared by several operators in close vicinity of one another. The commenters suggested the language be changed to say "available". Region 6 agrees that the requirement to have the equipment on site would be unnecessarily burdensome to small operations and is not necessary to proper operation and maintenance. The permit language has been changed to reflect the availability of the equipment. However, the permit now requires that the permittee document the availability of the equipment in the Pollution Prevention Plan.

11. Several persons and State agencies commented that the information from the nearest weather station might not accurately reflect the rainfall at the facility. These comments suggest that a rain gauge should be kept on site and the rainfall from any measurable event be recorded and kept with the pollution prevention plan. EPA agrees with the comment and has included the requirement in the final permit.

12. A few commenters asked if the requirement for erosion controls were necessary. These commenters believed this requirement would not result in further environmental protection. Increased sediment entering the pond structures could reduce the storage capacity and could result in noncompliance with the no discharge requirement.

13. Several comments requested that existing facilities be "grandfathered" or exempted from structural requirements, liners, and construction specifications. EPA agrees with commenters that structures which exist and exhibit good maintenance and structural integrity should be exempt from the construction specifications. It is not EPA's intent that these facilities be reconstructed. However, documentation of appropriate retention capacity and liner assessment will be required by all facilities in accordance with the terms of the permit.

14. Some comments requested that the requirement for grass or riprap to stabilize the walls of the retention structures, be changed to allow for other means of stabilization. The comments stated that in very cold or dry conditions grass would not survive and riprap was a very expensive alternative. The commenters stated that other methods could be used to prevent deterioration and that the Agency should allow for this flexibility.

The Agency agrees with this position and has simply required that the structures be stabilized against erosion and deterioration.

15. Several comments note that the design capacity must take into account the volume of wet manure, and suggests that this is too broad a statement. The commenters suggest that this be changed to the volume of manure which will enter the pond. It is the Agency's intent that only the volume of manure which will would reasonably be expected to enter the retention structure would have to be accounted for. The language in the final permit has been changed to reflect only the manure to be retained in the structure.

16. Many comments questioned the requirement of liners to protect from hydrologic connection. Many commenters believed that this requirement was to protect ground water. Over most of EPA Region 6 surface water flow is sustained throughout much of the year by ground water inflow. As a result, contaminants which leak from containment structures to the ground water will typically move underground toward local streams and rivers where they will be discharged and affect water quality. EPA has included a liner requirement specifically where there is potential for pond leakage to impair surface waters. Region 6 strongly believes this is consistent with the effluent guideline requirement of a "no discharge" technology. It is EPA's position that a discharge through the bottom of the retention structure constitutes a violation of the required technology requirement if significant pollutants from that discharge reach a surface water. Also, see answer D.4.

17. Several comments received requested clarification of hydrologic connection, and how this could be documented. Hydrologic connection refers to the interflow and exchange between surface water and ground water. In the context of this permit, the intent of the reduction of hydrologic connection is to reduce ground water as a flow path which would result in the transfer of pollutant materials from CAFO containment structures to surface waters. This definition has been included in the definition section of the CAFO general permit, Part VII. The conditions in the general permit have been simplified to allow a professional determination that hydrological connection does not occur to the degree that surface water contamination would result.

18. Many comments requested that the "liner requirement" apply only to new facilities. The commenters state that these facilities have a "biological seal" which prevents leakage. These persons note studies by Texas A&M which show facilities which are properly maintained seldom leak. EPA agrees that the process of plugging and gleisation may provide appropriate sealing of a pond under certain conditions, however, the permit requires the permittee to have specific documentation on site that a liner is not necessary.

19. Many commenters request that the hydraulic conductivity and thickness requirements (1×10^{-7}, and 1.5 feet) in the permit language change to be consistent with the Soil Conservation Service technical standards for liner construction. EPA agrees with the commenters that the technical determinations made by the SCS or by another professional using SCS Technical Notes 716 and 717 (or the current equivalent technical criteria) would protect for hydrologic connection. These determinations take into account the site specific variables. Additionally, a professional will not design the facility in structurally unstable area or on unstable soils. Where site specific conditions are not assessed by a professional, EPA believes that the more conservative requirement

of 1.5 feet of material compacted to 1×10^{-7} hydraulic conductivity (or its equivalent in an alternate material) is appropriate.

20. Many comments were made on the liner maintenance requirements of liner inspection and monitoring wells. The commenters included many State and Federal agricultural agencies as well as State water quality professionals. The Agency has reevaluated its proposed requirements of liner inspections and monitoring wells. EPA agrees with the agricultural professional that liner inspections would result in structural and biological damage to the liners. This requirement has been removed from the final permit. EPA also agrees with the water quality professionals that the indiscriminate drilling of monitoring wells for every facility could result in the contamination of ground water and drinking water aquifers. EPA also recognizes the States' concern that specific facilities may have the potential to leak and contaminate State waters. The final permit requires only those facilities which have been notified by the State or the Director to install monitoring wells to check for liner integrity.

21. Many commenters were concerned with the concept of agronomic rates, and the requirement that manures and wastewaters must be land applied at rates which consider the nutrient crop uptake. Many comments suggest that the land application be limited to available nitrogen. Many commenters requested a definition of "agronomic rates". Several persons noted the "slow release" nature of manure and requested that we take this into account. EPA agrees with the commenters that plant needs define agronomic rates. It is not EPA's intent to prescribe the specifics of agricultural use of wastes, but to insure that the rates used are consistent with EPA water quality goals and good agricultural practices. Where agricultural practices include high application rates of phosphorus near water bodies which are phosphorus impaired, it is EPA's intent that appropriate cultural practices be used to limit the potential runoff of nutrients.

22. Many commenters stated that manure was more environmentally safe than chemical fertilizers. However, some commenters believed the manure and waste products should be tested for nutrient content. Many comments stated that manure records should be kept in whatever unit of measure the farmer wanted. One commenter asked if weigh tickets would be required with the log of manure hauled away. EPA agrees that, properly used, manure is a more environmentally favorable fertilizer source than chemical fertilizers. However, it has been the finding that the improper or over application of animal wastes has impaired watersheds in each of the Region's States. EPA believes the removal of large quantities of wastes should be logged only (no weigh tickets are required by the permit). The permit has been changed to allow other appropriate units of measure.

Where the manure is analyzed, this information will be made available to the hauler. EPA will not *require* that manures and wastes be analyzed, however, the permittee must use appropriate information about the nutrient content of the wastes to determine and document land application rates at the facility.

23. Many persons objected to the requirement that stock piles of manure or land disposal sites would have to be protected from flooding if placed in the 100 year floodplain; and manure was not to be stockpiled near water courses. Many persons believed this restricted the ability of the operator to compost the manures to be used on the field.

Region 6 believes that these requirements are consistent with the no discharge requirement of the national standard. Significant amounts of manure, placed in floodplains and near water courses, could be discharged during rainfall or high water events. The permit requires the permittee protect against such occurrences. Region 6 does not believe this will substantially impair the permittees ability to compost wastes at the facility. The permittee can compost manures in locations away from water courses and transport the composted manure to the field when it is to be land applied.

24. Many concerned persons criticized EPA for not including adequate odor controls in the general permit. EPA's authority under the Clean Water Act does not extend to odor control at these facilities. Region 6 believes that the requirements in the permit do require the best management of the waste products from such facilities, and therefore, will reduce to the maximum extent possible problems which result in excessive odors.

25. Several commenters believed the permit should include requirements for "closure" of a facility. These citizens believe that these facilities constitute an extremely mobile industry and that when environmental regulations tighten, these facilities move to new locations leaving significant wastes behind exposed to runoff.

EPA has no specific authority to regulate the closure of these facilities. However, it should be noted, and the regulated community should be aware that CAFO facilities with over 1000 animal units are considered to "have storm water discharges associated with industry activity". In accordance with regulations published in the **Federal Register** on November 16, 1990 (55 FR 47990 Definition 14) all facilities or inactive sites where significant materials remain exposed to storm water must have a NPDES storm water permit. Therefore, sites vacated by large CAFO facilities will be required to remain permitted until all significant materials are removed.

E. Comments on Part IV of the General Permit—Monitoring and Reporting Requirements

A range of comments were received on the requirement for discharges and overflows from the retention structures to be sampled and analyzed. Some commenters rejected the need for any sampling, many provided information or stated opinions on which parameters should be analyzed, but most commenters questioned the need to test for fecal coliform bacteria. The U.S. Fish and Wildlife Service suggested the discharges be analyzed for metals, pesticide, hormone and antibiotic contamination. The Service also requested that permittees be required to do instream studies to determine if these contaminants were being released.

EPA agrees that the full scope of sampling may not be necessary to track the detrimental effects of a discharge. Additionally, review of State water quality inventories and information from water quality experts indicates that chronic eutrophication in watersheds is related to the improper or over application of wastes and not to the discharge from a properly operated facility. For this reason, Region 6 has included only those chemical parameters which are likely to produce acute effects as the result of a discharge. EPA is also concerned with the protection of human health which relates to the fecal bacteria discharged into the surface water. The parameters which must be analyzed are BOD, TSS, ammonia nitrogen, fecal coliform bacteria, and any pesticide that could reasonably be in the discharge.

EPA must develop permit conditions which satisfy the intent of the Clean Water Act. As described in 40 CFR 122.48, EPA shall specify reporting requirements in permits which are based upon the impact of the regulated activity. Fecal coliforms, excreted in mammalian feces, are clearly a

parameter pertinent and applicable to the "activity" of a confined animal feeding operation.

EPA has included many of the permit requirements suggested by the U.S. Fish and Wildlife Service. Region 6 agrees with Fish and Wildlife that immediate notification will allow the Agency the option to study the impacts of discharges. However, the data which the Service has collected are specific to geographic area and relate to pond sediments (mostly from historical waste management). Where this data may indicate that there are metals present in sediments of particular retention systems, EPA does not believe the body of data which exists at this present time indicates the potential for discharge of significant amount of metals from these facilities under rainfall conditions. EPA is unaware of any approved method to test for hormones or antibiotics in wastewaters. Region 6 believes further data could be gathered in the next five years. If this data indicated metals in discharges from CAFO facilities, EPA can address metals in this permit when it is reissued. The permit already requires that permittees analyze the sample for pesticides which may be in the discharge.

F. Comments on Part V of the General Permit—Standard Permit Requirements

Many persons remarked that several requirements in this part of the permit related to industrial dischargers and do not relate to CAFOs, and these items should be deleted from the final permit to avoid confusion. The Agency agrees with the commenters that much of the standard permitting language is directed at activities not found at a CAFO. Therefore, Region 6 has removed those sections of the standard permitting language which do not pertain to CAFOs. Items for Anticipated Noncompliance, Other Noncompliance Reporting, Bypass of Treatment Facilities, and Upset Conditions have been removed from Part IV. Items regarding Toxic Pollutants and Oil and Hazardous Substance Liability have been removed from Part V.

G. Comments on Part VI of the General Permit—Reopener Clause

The Department of the Interior Fish and Wildlife Service requested that the Agency include in the Reopener that the Agency would undergo a consultation with U.S. Fish and Wildlife if the permit is reopened. EPA is required to work with other regulatory agencies and often consult on permitting actions. It is not necessary to notify the permittee of all administrative activities which are undertaken when permits are reopened, only the reason the permit may be reopened. Therefore this will not be included in the final permit.

H. Comments on Part VII of the General Permit—Definitions

Many requests were received by EPA on words, term and phrases which the public requested defined or clarified. The Agency has provided clarifications in this responsiveness summary in the responses to comments for that particular section of the permit where the term was used. In addition, EPA has included several definitions to the final general permit. These are: "Agronomic Rates", "Best Available Technology" (BAT), "Best Conventional Technology" (BCT), "Hydrologic connection", "Process wastewater", "Qualified groundwater scientist".

Several persons point out that the term 10-year, 24-hour storm event is never mentioned in the general permit. This term has been deleted from the final general permit.

I. Comments on the Appendices of the General Permit

Most of the persons commenting on the general permit were opposed to the "Recommended Best Management Practices", manure nutrient information, and crop nutrient information that was published with the proposed permit. Many persons believed that more user-friendly and up-to-date information was available through State and Federal agencies which work with the agricultural community.

EPA agrees with the commenters and has removed such information from the final permit. The Agency has replaced it with listings of information sources and agencies to assist operators in the proper operation and management of CAFO facilities, and a listing of publications which were submitted by State and Federal agencies.

Part III. Economic Impact

EPA believes that this general permit will be economically beneficial to the regulated community, in that it provides an economic alternative to the individual application process the facilities covered by this permit would otherwise have to face. The requirements are consistent with those already imposed by effective Federal regulations and State requirements.

An economic analysis was done when the BAT requirements for the national effluent guidelines (40 CFR part 412) were published. Region 6 believes that the same economic and technology rationale would apply to the smaller facilities covered by this permit. Also, Region 6 believes that this permit is the most economical permitting option available to the smaller facilities with NPDES application requirements. Region 6 has also provided a comparison analysis in the Responsiveness Summary to show the applicability of the 1974 analysis.

If, however, any smaller facilities believe that this economic analysis for the guidelines containment technology would not apply to their facility and that they would be able to achieve necessary water quality requirements of the receiving stream, through the use of biological or equivalent treatment systems, those smaller facilities may apply for individual permit coverage.

Part IV. Compliance With Other Federal Regulations

A. National Environmental Policy Act

Finding of No Significant Impact

To All Interested Government Agencies and Public Groups: Pursuant to the requirements of section 511(c) of the Clean Water Act and the environmental review procedures of the U.S. Environmental Protection Agency (EPA) at 40 CFR part 6, "Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act" for the National Pollutant Discharge Elimination System (NPDES) New Source Program, the EPA has conducted a general environmental review of the following action:

1. *Action.* Issuance of General NPDES Permit for New Source Concentrated Animal Feeding Operations (CAFO), defined in 40 CFR part 122 appendix B and 40 CFR part 412, and located in all parts of the State. The discharge of process wastewater from these facilities is subject to the requirements of 40 CFR 122.23 and 40 CFR part 412, and to the application of the new source performance standards promulgated on February 14, 1974, under the NPDES permit program.

2. *Environmental Effects Generally Associated with CAFOs.* A summary of the potential impacts from CAFOs on the environment and the mitigating affects of the permit requirements were published with the proposed permit (57 FR 32475).

3. *Finding.* On the basis of an additional review of the impacts commonly associated with CAFO operations, information and comments received during the public comment period, and other available information, the EPA has made a final decision that the issuance of the General NPDES Permit will not result in any significant adverse environmental impacts and that

an Environmental Impact Statement (EIS) is not required. This Finding of No Significant Impact (FNSI) covers CAFO facilities in place and operating at the time of issuance of the General Permit. Applicants for CAFO facilities proposed after the issuance of the General Permit shall submit an appropriate EID and undergo environmental review prior to the start of construction. Comments regarding this decision not to prepare an EIS are discussed in the attached Responsiveness Summary.

New CAFO subject to National Effluent Guidelines (40 CFR Part 412) will be required to complete an Environmental Review with the Agency prior to coverage under the permit. New facilities are any CAFO not in operation as of the issuance date of these general permits. These facilities, prior to construction must complete an environmental review with this Agency. The initial form to start the process of an environmental review has been provided in appendix C of the permit. The permittee must have documentation of "No Significant Impact" or a completed Environmental Impact Statement, in accordance with an environmental review conducted by the Agency, as a condition of coverage under the permit. This documentation must be retained on site.

B. Endangered Species Act

The final permits published today will authorize no discharge other than upsets and bypasses, which are relatively infrequent occurrences. Accordingly, EPA Region 6 determines that issuance of these permits is unlikely to adversely affect any listed threatened or endangered species or designated critical habitat. EPA Region 6 has submitted copies of these permits to the U.S. Fish & Wildlife Service. EPA Region 6 consulted the U.S. Fish & Wildlife Service regarding this determination. EPA has addressed all of U.S. Fish & Wildlife Service concerns. Part I of this document outlines changes which were made to the final permit. The Responsiveness Summary in Part II explains the Agency's final permitting decisions with respect to the concerns raised by the U.S. Fish & Wildlife Service.

C. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

D. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this general permit under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under provisions of the Clean Water Act.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's general permit would generally make the NPDES regulations more flexible and less burdensome for permittees. This permit does not apply to small animal feeding operations unless specifically designated by the Director. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments, if promulgated, and that these general permits, when issued, will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: January 5, 1993.

B.J. Wynne,

Regional Administrator.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Concentrated Animal Feeding Operations in the State of Louisiana

[General Permit No.: LAG010000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100–4, the "Act".

Owners and operators of Concentrated Animal Feeding Operations except those sites excluded from coverage in Part I of this permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A copy of this general permit must be kept at the site of the concentrated animal feeding operations.

This permit will become effective on March 10, 1993.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire at midnight, on March 10, 1998.

Signed this fifth day of January, 1993.

Myron O. Knudson, P.E.,

Water Management Director, Region 6.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Concentrated Animal Feeding Operations in the State of New Mexico

[General Permit No.: NMG010000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100–4, the "Act".

Owners and operators of Concentrated Animal Feeding Operations except those sites excluded from coverage in Part I of this permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A copy of this general permit must be kept at the site of the concentrated animal feeding operations.

This permit will become effective on March 10, 1993.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire at midnight, on March 10, 1998.

Signed this fifth day of January, 1993.

Myron O. Knudson, P.E.,

Water Management Director, Region 6.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Concentrated Animal Feeding Operations in the State of Oklahoma

[General Permit No.: OKG010000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100–4, the "Act."

Owners and operators of Concentrated Animal Feeding Operations except those sites excluded from coverage in Part I of this permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A copy of this general permit must be kept at the site of the concentrated animal feeding operations.

This permit will become effective on March 10, 1993.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire at midnight, on March 10, 1998.

Signed this fifth day of January, 1993.

Myron O. Knudson, P.E.,

Water Management Director, Region 6.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Concentrated Animal Feeding Operations in the State of Texas.

[General Permit No.: TXG010000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100–4, the "Act".

Owners and operators of Concentrated Animal Feeding Operations except those sites excluded from coverage in Part I of this permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A copy of this general permit must be kept at the site of the concentrated animal feeding operations.

This permit will become effective on March 10, 1993.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire at midnight, on March 10, 1998.

Signed this fifth day of January, 1993.

Myron O. Knudson, P.E.,

Water Management Director, Region 6.

NPDES General Permit for Discharges From Concentrated Animal Feeding Operations

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Part I. Coverage Under This Permit

A. Permit Area

The permit covers all areas administered by Region 6 in the States of Louisiana, New Mexico, Oklahoma and Texas.

B. Coverage and Eligibility

Unless excluded from coverage in accordance with paragraph C or D below, owners or operators of animal feeding operations that are defined in 40 CFR part 122 appendix B as concentrated animal feeding operations, and are subject to the requirements 40 CFR 122.23 are eligible for coverage under this permit.

1. *Existing Facilities.* Owners or operators of existing Concentrated Animal Feeding Operations (CAFOs) are authorized under the terms and conditions of this permit upon the submittal of a Notice of Intent (NOI) [1] to gain coverage under this permit. Permittees must retain on site a copy of the permit and the pollution prevention plan as required by this permit.

2. *CAFOs With Expired Permits or Pending Applications.* Upon the submittal of a Notice of Intent [1] all facilities which have expired permits and have reapplied in accordance with 40 CFR 122.21(d); and all facilities which have submitted applications in accordance with 40 CFR 122.21(a) are automatically covered by the terms of this permit. A permittee may request to be excluded from coverage by this permit by applying for an individual permit in accordance with 40 CFR 122.28(b)(3)(iii).

3. *New Facilities.* Owners or operators of new Concentrated Animal Feeding Operations (CAFOs) are authorized under the terms and conditions of this permit upon the submittal of a Notice of Intent [1] to gain coverage under this permit. The owner or operator of a new CAFOs must submit a Notice of Intent five (5) business days prior to any discharge from the Concentrated Animal Feeding Operation. Permittees must retain on site a copy of the permit and the pollution prevention plan as required by this permit. Additional requirements for new facilities are as follows:

a. Requirements for New CAFOs with more than the number of animals specified in 40 CFR part 122 appendix B(a) [2] (or definition 7.a. of this permit). New Concentrated Animal Feeding Operation facilities subject to National Effluent Guidelines (40 CFR part 412) shall, prior to constructing, complete the form provided in appendix C of this permit. The form must be sent to: Mr. Hector Pena (6E–FF), U.S. EPA Region 6, 1445 Ross Ave., Suite 1200, Dallas, Texas 75202.

b. The permittee shall have documentation of "No Significant Impact" or a completed Environmental Impact Statement, in accordance with an environmental review conducted by this Agency, as a condition of coverage under this permit. This documentation shall be obtained and retained on site prior to the submittal of the Notice of Intent.

4. *Expanding Facilities.*[2] Facilities intending to expand operations to more than the number of animals specified in 40 CFR part 122 appendix B(a) (or definition 7.a. of this permit) will be subject to 40 CFR part 412 and will be required, prior to construction of the expansion, to submit a new notice of intent and to complete the form provided in appendix C of this permit. The form must be sent to the address in paragraph I.B.3.a (above). The permittee shall have documentation of "No Significant Impact" or a Completed Environmental Impact Statement, in accordance with an environment review conducted by this Agency, as a condition of coverage under this permit. This documentation shall be obtained and retained on site prior to the submittal of the notice of intent.

5. *Other Animal Feeding Operations.* All other animal feeding operation are encouraged to comply with the terms and conditions of this permit.

[1] The Notice of Intent Form is included in this permit as appendix B.

[2] The provisions in Part I.B.3.&4. are requirements of Federal programs under the National Environmental Policy Act of 1969 and will not apply to such facilities once authority for the NPDES program has been assumed by the state agency.

C. Limitations on Coverage

The following discharges from Concentrated Animal Feeding Operations (CAFOs) are not covered by this permit:

1. Concentrated Animal Feeding Operations that the Director has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard, and which have been notified by the Director to file for an individual or alternative general permit in accordance with part I.D (below) of this permit.

2. Concentrated Animal Feeding Operations which adversely affects a listed or proposed to be listed endangered or threatened species or its critical habitat.

3. Concentrated Animal Feeding Operations which adversely affects properties listed or eligible for listing in the National Register of Historic Places.

4. Concentrated Animal Feeding Operations that discharge all their runoff and wastewater to a publicly owned sanitary sewer system which discharges in accordance with an NPDES permit.

5. Concentrated Duck feeding operations established prior to 1974.

D. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and obtain either an individual NPDES permit or an alternative NPDES general permit as provided in 40 CFR 122.28(b)(2)(i). The Director will notify the owner or operator in writing that a permit application is required. If an owner or operator fails to submit in a timely manner an individual NPDES permit application required by the Director, then the applicability of the general permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

2. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit as provided in 40 CFR 122.28(b)(2)(iii). The owner or operator shall submit an individual application (Form 1 and Form 2B) to the Director with reasons supporting the request.

3. When an individual NPDES permit is issued to an owner or operator otherwise subject to this permit, or the owner or operator is approved for coverage under an alternative NPDES general permit, the applicability of this permit to the facility is automatically terminated on the effective date of the individual permit or on the date of approval for coverage under the alternative general permit. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the permittee is automatically reinstated under this permit on the date of such denial, unless otherwise specified by the Director.

E. Notification Requirements

1. Owners or operators of facilities authorized by this permit shall submit a Notice of Intent (NOI) to be covered to the Director. The form for the Notice of Intent for this permit is in appendix B of this permit. Notifications must be made within 90 days of issuance of this permit or upon completion of new facility. The Notice of Intent Form (or photocopy thereof) shall be signed by the owner or other signatory authority in accordance with Part VI.I. (Signatory Requirements), and a copy shall be retained on site in accordance with Part VI.D. (Retention of Records) of this permit. The address for Notice of Intent submission to EPA is:

U.S. EPA Region 6,
6W—EA General Permits,
P.O. Box 50625,
Dallas, Texas 75270.

2. A copy of the Notice of Intent must also be sent to the state agency where the Concentrated Animal Feeding Operation is located:

Louisiana: Gary Aydell, Administrator, Water Pollution Control Division, State of Louisiana, Dept. of Environmental Quality, P.O. Box 82215, Baton Rouge, LA. 70884–2215

Texas: Texas Water Commission, Agriculture Department, P.O. Box 13087, Austin, TX. 78711–3087

Oklahoma: State of Oklahoma, Department of Agriculture, 2800 N. Lincoln Blvd., Oklahoma City, OK. 73105–4298

New Mexico: Chief, Water Quality Bureau, New Mexico Environmental Department, 1190 St. Francis Blvd., P.O. Box 26110, Santa Fe, NM. 87502

F. Permit Expiration

Coverage under this permit will expire five (5) years from the date of issuance. The conditions of an expired permit continues in force until the effective date of a new permit (40 CFR 122.6).

Part II. Effluent Limitations

A. Discharge Limitations For All Categories Other Than Duck Facilities Established Prior to 1974

1. The following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a Concentrated Animal Feeding Operation in compliance with this permit after application of the best available technology economically achievable or new source performance standards: There shall be no discharge of process waste water pollutants to waters of the U.S. (including lakes, rivers, streams, wetlands and playa lakes as defined in 40 CFR 122.2) except in accordance with Part II.B of this permit.

2. Limitations established for concentrated duck feeding operations which began operations after the establishment of New Source Performance Standards in 1974 are subject to the new source performance standard: There shall be no discharge of process waste water pollutants to waters of the U.S. (including streams, rivers, lakes, wetlands, and playa lakes as defined in 40 CFR 122.2) except as specified in Part II.B. of this permit.

B. Releases in Excess of the 25 year, 24-hr Storm Event

Process waste pollutants in the overflow may be discharged to waters of the U.S. whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25-year, 24-hour rainfall event for the location of the point source. There shall be no effluent limitations on discharges from detention structures constructed and maintained to contain the 25 year, 24 hour storm event if the discharge is the result of a rainfall event which exceeds the design capacity and proper maintenance. Retention structures shall contain all process wastewaters plus the 25 year, 24 hour storm event.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. Prohibition on Unauthorized Substances

All discharges to containment structures shall be composed entirely of wastewaters from the proper operation and maintenance of a Concentrated Animal Feeding Operation and the precipitation from the animal feeding operation areas. The disposal of any

materials (other than discharges associated with proper operation and maintenance of the CAFO) into the containment structures are prohibited by this permit.

B. Proper Operation and Maintenance Requirements

The facilities covered by this permit are required to document the attainment of Best Available Technology (BAT) and Best Conventional Technology (BCT), and all Best Management Practices (BMPs) used to comply with the effluent limitations in this permit. Such documentation shall be included in the Pollution Prevention Plan (PPP) outlined in Part III.B.2. of this permit and shall be made available to the Director upon request. Where applicable, equivalent measures contained in a site specific Animal Waste Management Plan prepared by the U.S. Department of Agriculture Soil Conservation Service (SCS), may be substituted for the Best Management Practices and Pollution Prevention Plan requirements in this Part of the permit. Where provisions in the Soil Conservation Service plan are substituted for applicable Best Management Practices or portions of the Pollution Prevention Plan, the Pollution Prevention Plan must refer to the appropriate section of the Soil Conservation Service plan. If the pollution prevention plan contains reference to the Soil Conservation Service plan, a copy of the Soil Conservation Service plan must be kept on site.

1. *Best Management Practices.* The following Best Management Practices (BMPs) shall be utilized by concentrated animal feeding operations owners/operators, as appropriate, based upon existing physical and economic conditions, opportunities and constraints. Where the provisions in a Soil Conservation Service plan are equivalent or more protective the permittee may refer to the Soil Conservation Service plan as documentation of compliance with the Best Management Practices required by this permit.

a. Control facilities must be designed, constructed, and operated to contain all process generated wastewaters and the contaminated runoff from a 25-year, 24-hour rainfall event for the location of the point source. Calculations may also include allowances for surface retention, infiltration, and other site specific factors. Waste control facilities must be constructed, maintained and managed so as to retain all contaminated rainfall runoff from open lots and associated areas, process generated wastewater, and all other wastes which will enter or be stored in the retention structure.

b. Facilities shall not expand operations, either in size or numbers of animals, prior to amending or enlarging the waste handling procedures and structures to accommodate any additional wastes that will be generated by the expanded operations.

c. Open lots and associated wastes shall be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures designed to carry peak flows expected at times when the 25 year, 24-hr. rainfall event occurs.

d. New facilities shall not be built in a water of the U.S. (including streams, rivers, lakes, wetlands, and playa lakes as defined in 40 CFR 122.2).

e. No waters of the U.S. shall come into direct contact with the animals confined on the Concentrated Animal Feeding Operation. Fences may be used to restrict such access.

f. Wastewater retention facilities or holding pens may not be located in the 100-year flood plain unless the facility is protected from inundation and damage that may occur during that flood event.

g. There shall be no water quality impairment to public and neighboring private drinking water wells due to waste handling at the permitted facility. Facility wastewater retention facilities, holding pens or waste/wastewater disposal sites shall not be located closer to public or private water wells than the distances specified by State regulations or health codes or State issued permits for that facility.

h. Waste handling, treatment, and management shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or contribute to the taking of endangered or threatened species of plant, fish or wildlife.

i. Waste handling, treatment, and management shall not create an environmental or a public health hazard; shall not result in the contamination of drinking water; shall conform with State guidelines and/or regulations for the protection of surface water quality.

j. Solids, sludges, manure, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent significant pollutants from being discharged to waters of the United States.

k. The operator shall prevent the discharge of pesticide contaminated waters into waters of the United States All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent any significant pollutants from entering the waters of the United States.

l. Dead animals shall be properly disposed of within three (3) days unless otherwise provided for by the Director. Animals shall be disposed of in a manner to prevent contamination of surface waters of the United States or create a public health hazard.

m. Collection, storage, and disposal of liquid and solid waste should be managed in accordance with recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site shall be secondary to the proper disposal of waste and wastewater.

n. Appropriate measures necessary to prevent spills and to clean up spills of any toxic pollutant shall be taken. Where potential spills can occur materials handling procedures and storage shall be specified. Procedures for cleaning up spills shall be identified and the necessary equipment to implement a cleanup shall be available to personnel.

o. Special requirements for discharges through municipal separate storm sewer systems serving a population of 100,000 or more. Facilities discharging through a municipal separate storm system serving a population of 100,000 population or more shall comply with applicable requirements in the municipality's storm water management program. Concentrated Animal Feeding Operation facilities must comply with the requirements in the municipal storm water management program developed under an NPDES permit issued for the discharge of the municipal separate storm sewer system that receives the CAFO facility's discharge, provided the operator of the CAFO has been notified of such conditions.

2. *Pollution Prevention Plans.* A pollution prevention plan shall be developed for each facility covered by this permit. Pollution prevention plans shall be prepared in accordance with good engineering practices and should include measures necessary to limit pollutants in runoff. The plan shall describe and ensure the implementation of practices which are to be used to assure compliance with the limitations and conditions of this permit. The plan shall identify a specific individual(s) at the facility who is responsible for developing the implementation, maintenance, and revision of the pollution prevention plan. The activities

and responsibilities of the pollution prevention personnel should address all aspects of the facility's pollution prevention plan.

a. Where a Soil Conservation Service plan [3] has been prepared for the facility, the pollution prevention plan may refer to the Soil Conservation Service plan when the Soil Conservation Service plan documentation contains equivalent requirements for the facility. When the permittee uses a Soil Conservation Service plan as partial completion of the pollution plan, the Soil Conservation Service plan must be kept on site. Design and construction criteria developed by the Soil Conservation Service can be substituted for the documentation of design capacity and construction requirements Part III D.2.f. of the Pollution Prevention Plan provided the required inspection logs and water level logs (sections f(2)(A) and f(2)(D) respectively) are kept with the Soil Conservation Service plan. Waste management plans developed by the Soil Conservation Service can be substituted for the documentation of application rate calculations in sections f(2) (H) and (I).

b. Unless otherwise directed by the permitting authority: Large facilities (those with 1000 animal units or more) shall have on site and implement a Pollution Prevention Plan or its equivalent within 365 days (1 year) of the issuance date of this permit. Medium facilities (those with less than 1000 animal units but with 300 or more) shall have on site and implement a Pollution Prevention Plan or its equivalent within two (2) years of the issuance date of this permit. Small facilities (those under 300 animal units which have been designated by the Director as a point source) shall have on site and implement a Pollution Prevention Plan or its equivalent within three (3) years of the designation by the Director. New facilities shall have and implement a Pollution Prevention Plan or its equivalent prior to the submission of a Notice of Intent to be covered by this permit.

c. The plan shall be signed by the owner or other signatory authority in accordance with part IV.I. (Signatory Requirements), and be retained on site in accordance with part IV.D. (Retention of Records) of this permit. The plan shall be updated as appropriate.

d. If the plan is reviewed by the Director, or authorized representative, the Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. After such notification from the Director, or authorized representative, the permittee shall make changes to the plan within 90 days after such notification unless otherwise provided by the Director.

e. The permittee shall amend the plan prior to any change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States or if the pollution prevention plan proves to be ineffective in achieving the general objectives of controlling pollutants in discharges from Concentrated Animal Feeding Operations. Amendments to the plan may be reviewed by the Director or authorized representative.

f. The plan shall include, at a minimum, the following items:

(1) *Description of Potential Pollutant Sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add pollutants to runoff from the facility. Each plan shall identify activities and materials which may potentially be pollutant sources. Each plan shall include:

(A) A site map, or topographic map indicating, an outline of the drainage area of the concentrated animal feeding area; each existing structural control measure to reduce pollutants in wastewater and precipitation runoff; and surface water bodies.

(B) A list of significant materials that are used, stored or disposed of at the Concentrated Animal Feeding Operation (such as pesticides, cleaning agents, fuels etc.). And a list of any significant spills of these materials at the facility after the issuance date of this permit, or for new facilities, since date of operation.

(C) All existing sampling data.

(2) *Waste Management Controls.* The Pollution Prevention Plan for each facility shall include a description of management controls appropriate for the facility, and the permittee must implement such controls. The appropriateness and priorities of any controls shall reflect the identified sources of pollutants at the facility.

(A) The plan shall include the location and a description of existing structural and non-structural controls. Structural controls shall be inspected at least four times per year for structural integrity and maintenance. The plan shall include dates for inspection of the retention facility, and a log of the findings of such inspections.

(B) *Retention Capacity Calculations.* The plan must include documentation of existing retention facility capacity and the assumptions and calculations used in determining the appropriate volume capacity. The retention capacity shall be based upon the 25-year 24-hour rainfall event and the facility design should include a top freeboard of two feet and in no case less than one foot. Retention facilities shall be sized based upon the following volumes:

(i) The runoff volume from open lot surfaces plus

(ii) The runoff volume from areas between open lot surfaces and the retention facilities plus

(iii) The rainfall multiplied by the area of the retention facility and wastes basin plus

(iv) The volume of rainfall from any roofed area that is directed into the retention facilities plus

(v) All wastes and process generated wastewater produced during a period of time not less than 21 days or the amount specified in the State Water Quality Management Plan including: (1) Volume of wet manure that will enter pond plus; (2) volume of water used for manure/waste removal plus; (3) volume of cleanup/washwater plus; (4) other water such as drinking water that enters the retention facilities.

Where appropriate, site specific information should be used to determine retention capacity and land application rates. All site specific information used must be documented in the Pollution Prevention Plan.

(C) *Retention Facility Embankments.* The plan shall include a description of the design standards for the retention facility embankments. The following minimum design standards are required for construction and/or modification of a retention facility: Soils used in the embankment shall be free of foreign material such as trash, brush, and fallen trees. The embankment shall be constructed in lifts or layers no more than six inches thick and compacted at optimum moisture content. Site specific variation in embankment construction must be accompanied by compaction testing, certification by a Professional Engineer, or be in accordance with Soil Conservation Service design standards. Compaction tests must be certified by a Professional Engineer. All embankment walls shall be stabilized to prevent erosion or deterioration.

(D) *Retention Facility Dewatering.* The plan must include a schedule for liquid

[3] SCS Waste Management Plans which have been prepared since January 1, 1989 are considered by the Soil Conservation Service to contain adequate management practices. To insure the protection of water quality, the Soil Conservation Service has determined that SCS plans prepared prior to 1989 must be renewed with the Soil Conservation Service or waste management professional before December 1995. SCS has determined that all plans should be reviewed every five (5) years to insure proper management of wastes.

waste removal. A date log indicating weekly inspection of wastewater level in retention facility, including specific measurement of wastewater level will be kept with the plan. Retention facilities shall be equipped with either irrigation or evaporation or liquid removal systems capable of dewatering the retention facilities. Operators using pits, ponds, or lagoons for storage and treatment of storm water, manure and process generated wastewater, including flush water waste handling systems, shall maintain in their wastewater retention facility sufficient freeboard to contain rainfall and rainfall runoff from a 25-year rainfall event. The operator shall restore freeboard for a 25-year rainfall event after any rainfall event or accumulation of wastes or process generated wastewater which reduces such freeboard, weather permitting. Equipment capable of dewatering the wastewater retention structures of waste and/or wastewater shall be available whenever needed to restore the freeboard required to accommodate the rainfall and runoff resulting from the 25-year rainfall event.

(E) A permanent marker (measuring device) shall be maintained in the wastewater retention facilities to show the volume required for a 25-year rainfall event within the containment ponds. The marker shall be visible from the top of the levee.

(F) A rain gauge shall be kept on site and properly maintained. A log of all measurable rainfall events shall be kept with the Pollution Prevention Plan.

(G) Concentrated animal feeding operations constructing a new or modifying an existing wastewater retention facility shall insure that all construction and design is in accordance with good engineering practices. Where site specific variations are warranted, the permittee must document these variations and their appropriateness to the plan. Existing facilities which have been properly maintained and show no signs of structural breakage will be considered to be properly constructed. Structures built in accordance with site specific Soil Conservation Service plans and specifications will be considered to be in compliance with the design and capacity requirements of this permit if the site specific conditions are the same as those used by the Soil Conservation Service to develop the plan (numbers of animals, runoff area, wastes generated, etc.). All retention structure design and construction shall, at a minimum, be in accordance with the technical standards developed by the USDA Soil Conservation Service. The permittee must use those standards that are current at the time of construction.

(H) *Liner Requirement.* The permittee shall include in the plan, site specific documentation that no significant hydrologic connection exists between the contained wastewater and surface waters of the United States. Where the permittee cannot document that no significant hydrologic connection through ground water exists, the ponds, lagoons and basins of the retention facilities must have a liner which will prevent the potential contamination of surface waters.

(i) *Documentation of No Liner Requirement.* The permittee can document lack of hydrologic connection by either: (1) Documenting that there will be no significant leakage from the retention structure; or (2) documenting that any leakage from the retention structure would not migrate to surface waters. This documentation should be certified by a Professional Engineer or qualified groundwater scientist and must include information on the hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure up to the wetted perimeter.

For documentation of no significant leakage, in-situ materials must, at a minimum, meet the minimum criteria for hydraulic conductivity and thickness described below. Documentation that leakage will not migrate to a surface water must include maps showing ground water flow paths, or that the leakage enters a confined environment. A written determination by an SCS engineer, a Professional Engineer, or qualified groundwater scientist that a liner is not needed to prevent leakage of significant amounts of pollutants into surface waters via perched or ground waters will be considered documentation that no significant hydrologic connection exists.

(ii) *Liner Construction.* Site-specific conditions should be considered in the design and construction of liners. Soil Conservation Service liner requirements or liners constructed and maintained in accordance with Soil Conservation Service design specifications in Technical Note 716 (or its current equivalent) shall be considered to prevent hydrologic connection which could result in the contamination of surface waters. Liners for retention structures should be constructed in accordance with good engineering practices. Where no site-specific assessment has been done by a Soil Conservation Service, Professional Engineer, or qualified groundwater scientist the liner shall be constructed to have hydraulic conductivities no greater than 1×10^{-7} cm/sec, with a thickness of 1.5 feet or greater or its equivalency in other materials.

(iii) *Liner Maintenance.* Where a liner is installed to prevent hydrologic connection the permittee must maintain the liner to inhibit infiltration of wastewaters. Liners shall be protected from animals by fences or other protective devices. No trees shall be allowed to grow within the potential distance of the root zone. Any mechanical or structural damage to the liner will be evaluated by a Soil Conservation Service engineer, Professional Engineer, or qualified groundwater scientist within 30 days of the damage. Documentation of liner maintenance shall be kept with the Pollution Prevention Plan. The permittee shall have a Soil Conservation Service engineer, Professional Engineer, or qualified groundwater scientist review the documentation and do a site evaluation every five years. If notified by the State or the Director that the potential exists for the contamination of surface waters or drinking water, the permittee shall install a leak detection system or monitoring wells in accordance with that notice. Documentation of compliance with the notification must be kept with the Pollution Prevention Plan, as well as all sampling data. Data from the monitoring wells must be kept on site for three years with the pollution prevention plan. The first year's sampling shall be considered the baseline data and must be retained on site for the life of the facility.

(I) *Wastewater Removal and Land Application.* Retention facilities shall be equipped with either irrigation or evaporation systems capable of dewatering the retention facilities, or a regular schedule of wastewater removal by contract hauler. The Pollution Prevention Plan must include all calculations, as well as, all factors used in determining land application rates, acreage, and crops. Land application rates must take into account the nutrient contribution of any land applied manures. If land application is utilized for disposal of wastewater, the following requirements shall apply:

(i) The discharge or drainage of irrigated wastewater is prohibited where it will result in a discharge to water of the U.S.

(ii) When irrigation disposal of wastewater is used, facilities shall not exceed the nutrient uptake of the crop coverage or planned crop planting with any land application of wastewater and/or manure. Land application rates of wastewaters should be based on the available nitrogen content, however,

where local water quality is threatened by phosphorus, the permittee should limit the application rate to the recommended rates of available phosphorus for needed crop uptake and provide controls for runoff and erosion as appropriate for site conditions.

(iii) Wastewater shall not be irrigated when the ground is frozen or saturated or during rainfall events (unless to filter wastewaters from retention structures which are going to overflow directly to a water of the U.S.).

(iv) Irrigation practices shall be managed so as to reduce or minimize ponding or puddling of wastewater on the site, contamination of ground or surface water, and the occurrence of nuisance conditions such as odors and flies.

(v) It shall be considered "Proper Operation and Maintenance" for a facility which has been properly operated, and that is in danger of imminent overflow due to chronic or catastrophic rainfall, to discharge wastewaters to land application sites for filtering prior to discharging to waters of the U.S.

(vi) Facilities including ponds, pipes, ditches, pumps, diversion and irrigation equipment shall be maintained to insure ability to fully comply with the terms of this permit and the pollution prevention plan.

(vii) Adequate equipment or land application area shall be available for removal of such waste and wastewater as required to maintain the retention capacity of the facility for compliance with this permit.

(viii) Disposal of wastewaters shall not cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife; nor shall such disposal interfere with or cause harm to migratory birds. The operator shall notify the appropriate fish and wildlife agency in the event of any significant fish, wildlife, or migratory bird/endangered species kill or die-off on or near retention ponds or in fields where waste has been applied, and which could reasonably have resulted from waste management at the facility.

(ix) Where land application sites are isolated from surface waters and no potential exists for runoff to reach a water of U.S., application rates may exceed nutrient crop uptake rates as provided in an approved state program. No land application under this section shall cause or contribute to a violation of water quality standards.

(J) *Manure and Pond Solids Handling and Land Application.* Storage and land application of manure shall not cause a discharge of significant pollutants to waters of the United States or cause a water quality violation in waters of the United States. At all times, sufficient volume shall be maintained within the control facility to accommodate manure, other solids, wastewaters and rain waters (runoff) from the concentrated animal feeding areas.

(i) Where the permittee decides to land apply manures and pond solids that plan shall include: (1) a description of waste handling procedures and equipment availability; (2) the calculations and assumptions used for determining land application rates; and (3) any nutrient analysis data if laboratory analysis is done. Land application rates of wastes should be based on the available nitrogen content of the solid waste. However, where local water quality is threatened by phosphorous, the application rate should be limited to the recommended rates of available phosphorus for needed crop uptake and provide controls for runoff and erosion as appropriate for site conditions.

(ii) If the waste (manure) is sold or given to other persons for disposal, the permittee must maintain a log of: date of removal from the feedlot; name of hauler; and amount, in wet tons, dry tons or cubic yards, of waste removed from the feedlot. (Incidental amounts, given away by the pick-up truck load, need not be recorded.) Where the wastes are to be land applied by the hauler, the premittee must make available to the hauler any nutrient sample analysis from that year.

(iii) The procedures documented in the pollution prevention plan must ensure that the handling and disposal of wastes comply with the following requirements:

(a) Adequate manure storage capacity based upon manure and waste production and land availability shall be provided. Storage and/or surface disposal of manure in the 100-year flood plain or near water courses is prohibited unless protected buy adequate berms or other structures. The land application of wastes at agricultural rates shall not be considered surface disposal in this case and is not prohibited.

(b) Runoff from manure storage piles must be retained on site.

(c) Waste shall not be applied to land when the ground is frozen or saturated or during rainfall events.

(d) Waste manure shall be applied to suitable and at appropriate times and rates. Discharge (run-off) of waste from the application site is prohibited. Timing and rate of applications to shall be response to crop needs, assuming usual nutrient losses, expected precipitation and soil conditions.

(e) Disposal of manure shall not cause or contribute to the taking of any endangered or threatened specie of plant, fish, or wildlife; nor shall such disposal interfere with or cause harm to migratory birds. The operator shall notify the appropriate fish and wildlife agency in the event of a fish, wildlife, or migratory bird/endangered species kill or die-off on or near retention ponds or in fields where waste has been applied.

(f) All necessary practices to minimize waste manure transport to water courses shall be utilized and documented to the plan.

(g) Edge-of-field, grassed strips shall be used to separate water courses from runoff carrying eroded soil and manure particles. Land subject to excessive erosion shall be avoided.

(h) Where land application sites are isolated from surface waters and no potential exists for runoff to reach a water of the U.S., application rates may exceed nutrient crop uptake rates as provided in an approved state program. No land application under this section shall cause or contribute to a violation of water quality standards.

(3) *Preventive Maintenance.* The plan shall include an appropriate schedule for preventative maintenance. Operators will provide routine maintenance to their control facilities in accordance with schedule and plan of operation to ensure compliance with this permit. The permittee shall keep a maintenance log documenting that preventative maintenance was done. A preventive maintenance program shall involve inspection and maintenance of all runoff management devices (cleaning separators, catch basins) as well as inspecting and testing facility equipment and containment structures to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

(4) *Sediment and Erosion Prevention.* The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion. Where these areas have the potential to contribute pollutants to waters of the U.S. the Pollution Prevention Plan shall identify measures used to limit erosion and pollutant runoff.

(5) *Employee Training.* Where employees are responsible for work activities which relate to permit compliance, those employees must be regularly trained or informed of any information pertinent to the proper operation and maintenance of the facility and waste disposal. Employee training shall inform personnel at all

levels of responsibility of the general components and goals of the pollution prevention plan. Training shall include topic as appropriate such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary recordkeeping requirements, and spill response and clean up. The permittee is responsible for determining the appropriate training frequency for different levels of personnel and the pollution prevention plan shall identify periodic dates for such training.

(6) *Inspection and Recordkeeping.* The operator or the person named in the pollution prevention plan as the individual responsible for drafting and implementing the plan shall be responsible for inspections and recordkeeping.

(A) *Recordkeeping and Internal Reporting Procedures.* Incidents such as spills, or other discharges, along with other information describing the pollution potential and quantity of the discharge shall be included in the records. Inspections and maintenance activities shall be documented and recorded. These records must be kept on site for a minimum of three years.

(B) *Visual Inspections.* The authorized person shall inspect designated equipment and facility areas. Material handling areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. A follow-up procedure shall be used to ensure that appropriate action has been taken in response to the inspection.

(C) *Site Inspection.* A complete inspection of the facility shall be done and a report made documenting the findings of the inspection made at least once/year. The inspection shall be conducted by the authorized person named in the pollution prevention plan, to verify that the description of potential pollutant sources is accurate; the drainage map has been updated or otherwise modified to reflect current conditions; and the controls outlined in the pollution prevention plan to reduce pollutants are being implemented and are adequate. Records documenting significant observation made during the site inspection shall be retained as part of the pollution prevention plan. Records of inspections shall be maintained for a period of three years.

3. *Other Legal Requirements.* No condition of this permit shall release the permittee from any responsibility or requirements under other statutes or regulations, Federal, State or local.

Part IV. Monitoring and Reporting Requirements

A. Discharge Notification

If, for any reason, there is a discharge to a water of the U.S., the permittee is required to make verbal notification to EPA at (214) 655–6593, and to notify the Director and the State in writing within 14 working days of the discharge from the retention facility. In addition the permittee shall document the following information to the pollution prevention plan within 14 days of becoming aware of such discharge:

1. A description and cause of the discharge, including a description of the flow path to the receiving water body. Also, an estimation of the flow and volume discharged.

2. The period of discharge, including exact dates and times, and, if not corrected the anticipated time the discharge is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the discharge.

3. If caused by a precipitation event(s), information from the onsite rain gauge concerning the size of the precipitation event.

4. Unless otherwise directed by the permitting authority: Large facilities (those with 1000 animal units or more) shall sample and analyze all discharges from retention facilities. Medium facilities (those with less than 1000 animal units but with 300 or more) shall sample and analyze all discharges, but at a maximum required frequency of once/year. Small facilities (those under 300 animal units which have been designated by the Director as a point source) shall sample and analyze all discharges, but at a maximum required frequency of once per permit term. Sample analysis shall be documented to the Pollution Prevention Plan.

5. Samples shall consist of grab samples taken from the over-flow or discharges from the retention structure. A minimum of one sample shall be taken from the initial discharge (within 30 minutes). The sample shall be taken and analyzed in accordance with EPA approved methods for water analysis listed in 40 CFR part 136. Measurements taken for the purpose of monitoring shall be representative of the monitored discharge.

6. Sample analysis of the discharge must, at a minimum, include the following: Fecal Coliform bacteria; 5-day Biochemical Oxygen Demand (BOD5); Total Suspended Solids (TSS); ammonia nitrogen; and any pesticide which the operator has reason to believe could be in the discharge.

7. Sampling Waiver. In lieu of discharge sampling data the permittee must document description of why discharge samples could not be collected when the discharger is unable to collect samples due to climatic conditions which prohibit the collection of samples including weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.). Once dangerous conditions have passed, the permittee shall collect a sample from the retention structure pond or lagoon. The sample shall be analyzed in accordance with Part IV.A.6. & 7. (above).

B. Written Notification

All discharge information and data will be made available to the Director upon request. Signed copies of monitoring reports shall be submitted to the Director if requested at the address specified in the request.

C. Penalties for Falsification of Reports

The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

D. Retention of Records

The permittee shall retain copies of all records required by this permit for a period of at least three years from the date reported. This period may be extended by request of the Director at any time.

E. Availability of Reports

In addition to data determined to be confidential under 40 CFR part 2, information submitted to EPA may be claimed as confidential by the submitter. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. As required by the Act, however, Notices of Intent, permits, the effluent data shall not be considered confidential and any claims of confidentiality for this information will be denied.

F. Planned Changes

The permittee shall document to the Pollution Prevention Plan as soon as possible, any planned physical alterations or additions to the permitted facility. The permittee must insure that any change or facility expansion will

not result in a discharge in violation of this permit.

G. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

H. Other Information

When the permittee becomes aware that he failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he shall promptly submit such facts or information.

I. Signatory Requirements

All reports or information submitted to the Director shall be signed and certified.

1. All reports or information shall be signed by the facility owner or operator/manager where the authority to sign documents has been assigned or delegated to the operator/manager.

a. For facilities owned by a corporation: by a responsible corporate officer. For the purpose of this permit, a responsible corporate officer means (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation.

b. For a facilities owned by a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For facilities owned by a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is duly authorized representative only if the authorization is made in writing by a person describe above, and the authorization specifies either an individual or a position having responsibility for the overall operation.

3. *Certification.* Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Part V. Standard Requirements

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for loss of authorization to discharge under this general permit; or for denial of a permit renewal application.

B. Inspection and Entry

The permittee shall allow the Director, or an authorized representative of EPA including the State, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit:

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

C. Toxic Pollutants

The permittee shall comply with effluent standards of prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

D. Penalties for Violation of Permit Conditions

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 319, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation is subject to a fine of not less than $2,500, nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or both.

E. Continuation of the Expired General Permit

An expired general permit continues in force and effect until a new general permit is issued.

F. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

G. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

H. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

I. Penalties for Falsification of Monitoring Systems and Reports

The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in Part V.D. (Penalties for Violation of Permit Conditions) of this permit.

J. Property Rights

The issuance of this permit does not convey and property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

K. Severability

The provisions of this permit are severable, and if any provision of this

permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit. shall not be affected thereby.

L. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

M. Permit Actions

This permit may be modified, revoked or reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition

Part VI. Reopener Clause

If effluent limitations or requirements are established or modified in an approved State Water Quality Management Plan or Waste Load Allocation and if they are more stringent than those listed in this permit or control a pollutant not listed in this permit, this permit may be reopened to include those more stringent limits or requirements.

Part VII. Definitions

25-Year 24-Hour Rainfall Event means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

Agronomic Rates means the land application of animal wastes at rates of application which provide the crop or forage growth with needed nutrients for optimum health and growth.

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the disposal of wastes.

Animal unit means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0. 1000 animal units will refer to group a. in definition number 8. 300 animal units (but less than 1000) will refer to group b. in definition number 8.

Best Available Technology ("BAT") means the best available technology which is economically achievable established under 301(b) and 402 of the Act. The criteria and standards for imposing technology-based treatment requirements are listed in 40 CFR 125.3.

Best Conventional Technology ("BCT") means the best conventional pollutant control technology which is economically achievable established under 301(b) and 402 of the Act. The criteria and standards for imposing technology-based treatment requirements are listed in 40 CFR 125.3.

Best Management Practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States". Best Management Practices also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Concentrated Animal Feeding Operation means an "animal feeding operation" which meets the criteria in 40 CFR part 122, appendix B, or which the Director designates as a significant contributor of pollution pursuant to 40 CFR 122.23. Animal feeding operations defined as "concentrated" in 40 CFR part 122 appendix B are as follows:

a. New and existing operations which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:

1. 1,000 slaughter or feeder cattle;
2. 700 mature dairy cattle (whether milkers or dry cows);
3. 2,500 swine weighing over 55 pounds;
4. 500 horses;
5. 10,000 sheep or lambs;
6. 55,000 turkeys;
7. 100,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
8. 30,000 laying hens or broilers when facility has liquid manure handling system;
9. 5,000 ducks; or
10. 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep;

b. New and existing operations which discharge pollutants into navigable waters either through a man-made ditch, flushing system, or other similar man-made device, or directly into waters of the United States, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:

1. 300 slaughter or feeder cattle;
2. 200 mature dairy cattle (whether milkers or dry cows);
3. 750 swine weighing over 55 pounds;
4. 150 horses;
5. 3,000 sheep or lambs;
6. 16,000 turkeys;
7. 30,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
8. 9,000 laying hens or broilers when the facility has a liquid manure handling system;
9. 1,500 ducks; or
10. 300 animal units (from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep).

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25-year, 24-hour storm event.

Control Facility means any system used for the retention of all wastes on the premises until their ultimate disposal. This includes the retention of manure, liquid waste, and runoff from the feedlot area.

Environmental Review means the process whereby an evaluation of the environmental information provided by the permit applicant is undertaken by EPA to identify and evaluate the related environmental impacts to determine if there will be a significant impact to the environment from the new facility (40 CFR 6.101(c)).

Feedlot means a concentrated, confined animal or poultry growing operation for meat, milk, or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth or production is not sustained in the area of confinement, and is subject to 40 CFR part 412.

Groundwater means any subsurface waters.

Hydrologic Connection means the interflow and exchange between surface

impoundments and surface water through an underground corridor or groundwater. In the context of this permit, the reduction of hydrologic connection is to reduce the groundwater flow contact resulting in the transfer of pollutant materials from Concentrated Animal Feeding Operation containment structures into surface waters.

Land Application means the removal of wastewater and waste solids from a control facility and distribution to, or incorporation into, the soil mantle primarily for disposal purposes.

Liner means any barrier in the form of a layer, membrane or blanket, installed to prevent a significant hydrologic connection between liquids contained in retention structures and waters of the United States.

Process Wastewater means any process generated wastewater directly or indirectly used in the operation of a feedlot (such as spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact swimming, washing, or spray cooling of animals; and dust control) and any precipitation which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, eggs).

Retention Facility or *Retention Structures* means all collection ditches, conduits and swales for the collection of runoff and wastewater, and all basins, ponds and lagoons used to store wastes, wastewaters and manures.

Severe Property Damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

The Act means the Federal Water Pollution Control Act as amended, also known as the Clean Water Act, found at 33 U.S.C. 1251 *et seq.*

Toxic Pollutants mean any pollutant listed as toxic under section 307(a)(1) of the Act.

Qualified Groundwater Scientist means a scientist or engineer who has received a baccalaureate or post-graduate degree in natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contamination fate and transport, and corrective action (40 CFR 258.50(f)).

Appendix A—State Specific Permit Language for the State of New Mexico

This NPDES permit is intended to protect surface waters resources that are "waters of the United States" from contamination resulting from concentrated animal feeding operations through either surface of subsurface conveyance. This permit is not intended to protect ground water resources from contamination. Compliance with this permit does not absolve the permittee from the need to comply with New Mexico Water Quality Control Commission Regulations for the protection of ground water. For information on these state regulations please contact the new Mexico Environment Department, Groundwater Protection and Remediation Bureau, P.O. Box 26110, Santa Fe, New Mexico 87502 or all (505) 827–2900.

State Specific Permit Language for the State of Oklahoma

Part I.C. Limitations on Coverage. The following point source discharges are not authorized by this general permit:

7. "New" Concentrated Animal Feeding Operations commencing after the effective date of the Oklahoma Water Quality Standards (Oklahoma Annotated Code Title 785, (Chapter 45) effective date June 25, 1992) to the following waters:
   a. Waterbodies designated as "Outstanding Resource Waters" and/or "Scenic Rivers" in Appendix A of the Oklahoma Water Quality Standards;
   b. Oklahoma waterbodies located within the watersheds of waterbodies designated as "Scenic Rivers" in Appendix A of the Oklahoma Water Quality Standards; and
   c. Waterbodies located within the boundaries of Oklahoma Water Quality Standards Appendix B areas which are specifically designated as "Outstanding Resource Waters" in Appendix A of the Oklahoma Water Quality Standards.

State Specific Permit Language for the State of Texas

Part IV.

A. Discharge Notification. If, for any reason, there is a discharge, the permittee is required to notify the Director in writing within 14 days of the discharge from the retention facility. Written notification of discharges from retention structures to waters of the U.S. shall be reported to the State within five (5) working days. In addition the permittee shall document the following information to the pollution prevention plan within 14 days of becoming aware of such discharge:

BILLING CODE 6560-50-M

APPENDIX B

NOTICE OF INTENT (NOI) to be Covered by
the General Permit for Concentrated Animal Feeding Operations

This notification shall not be made to EPA, Region 6 if prohibited from coverage under Part I.C. of this permit.

Name and Address of Facility (include County or Parish): _____

_____

_____

_____

_____

_____

Telephone Number: _____

Name of Operator: _____

Name, Address and Telephone Number of Owner (if different): _____

_____

_____

_____

Numbers and Type(s) of animals confined at the facility (e.g. feeder pigs, dairy cows, etc.): _____

_____

_____

Total acreage occupied by the facility: _____

Latitude and Longitude Location of the Facility:

LATITUDE	____ degrees	____ minutes	____ seconds
LONGITUDE	____ degrees	____ minutes	____ seconds

Receiving stream (if known): _____

State Permit Number (if applicable): _____

Signature:

_____ _____

Signature must be in accordance with Part IV.I of the General Permit — Date Signed

NOTICE OF TERMINATION (NOT)

NPDES Permit Number: _____

State Permit Number (if applicable): _____

Date NOI was submitted: _____

Name and Address of Facility (include County or Parish): _____

_____

_____

_____

_____

_____

Telephone Number: _____

Name of Operator: _____

The following information is required only if changes have been made to the facility since the submittal of the Notice of Intent:

Name and Address of Owner (if different): _____

_____

_____

_____

_____

Numbers and Type(s) of animals confined at the facility (e.g. feeder pigs, dairy cows, etc.): _____

_____

_____

_____

Total acreage occupied by the facility: _____

Latitude and Longitude Location of the Facility:

LATITUDE ____ degrees ____ minutes ____ seconds

LONGITUDE ____ degrees ____ minutes ____ seconds

Receiving Stream if known): _____

Reason for the termination of permit coverage: _____

_____

_____

_____

_____

_____

_____

(Add attached sheets if necessary.)

Signature:

_____ _____

Signature must be in accordance with Part IV.I of the General Permit. Date Signed

APPENDIX C

BASIC FORMAT FOR ENVIRONMENTAL ASSESSMENT

This is the basic format for the Environmental Assessment prepared by EPA Region 6 from the review of the applicant's Environmental Information Document (EID) required for new source NPDES permits. Comprehensive information should be provided for those items or issues that are affected; the greater the impact, the more detailed information needed. The EID should contain a brief statement addressing each item listed below, even if the item is not applicable. The statement should at least explain why the item is not applicable.

A. General Information
   1. Name of applicant
   2. Type of facil
   3. Location of facility
   4. Product manufactured

B. Description Summaries
   1. Describe the proposed facility and construction activity
   2. Describe all ancillary construction not directly involved with the production processes
   3. Describe briefly the manufacturing processes and procedures
   4. Describe the plant site, its history, and the general area

C. Environmental Concerns
   1. Historical and Archeological (include a statement from the State Historical Preservation Officer)
   2. Wetlands Protection and 100-year Floodplain Management (the Army Corps of Engineers must be contacted if any wetland area or floodplain is affected)
   3. Agricultural Lands (a prime farmland statement from the Soil Conservation Service must be included)
   4. Coastal Zone Management and Wild and Scenic Rivers
   5. Endangered Species Protection and Fish and Wildlife Protection (a statement from the U.S. Fish and Wildlife Service must be included)
   6. Air, Water and Land Issues: quality, effects, usage levels, municipal services used, discharges and emissions, runoff and wastewater control, geology and soils involved, land-use compatibility, solid and hazardous waste disposal, natural and man-made hazards involved.
   7. Biota concerns: floral, faunal, aquatic resources, inventories and effects
   8. Community Infrastructures available and resulting effects: social, economic, health, safety, educational, recreational, housing, transportation and road resources

BASIC ENVIRONMENTAL INFORMATION DOCUMENT GUIDELINES FOR NEW SOURCE CATEGORY INDUSTRIES - EPA REGION 6

I General Information

A. Name of Applicant and Proposed Facility. _____

B Description of Site and Location _____

C Description of Project, Product and Process: _____

APPENDIX D

CONTACTS AND REFERENCE MATERIALS

To report kills or determine impacts on endangered or threatened species, contact the Fish and Wildlife Service Office nearest you that is listed below:

Fish & Wildlife Service

Regional Office
500 Gold Avenue, SW
P.O. Box 1305
Albuquerque, NM 87103
(505) 766-2914

Field Office
3530 Pan American Highway NE
Suite D
Albuquerque, NM 87107
(505) 883-7877

Field Office
711 Stadium Drive East
Suite 252
Arlington, TX 76011
(817) 885-7830

Field Office
611 East 6th Street
4th Floor
Austin, TX 78701
(512) 482-5436

Field Office
17629 El Camino Real
Suite 211
Houston, TX 77058
(713) 286-8282

Field Office
c/o Corpus Christi State University
Campus Box 338
6300 Ocean Drive
Corpus Christi, TX 78412
(512) 888-3346

Field Office
222 South Houston, Suite A
Tulsa, OK 74127
(918) 581-7458

Field Office
825 Caliste Saloom
Brandywine II, Suite 102
Lafayette, LA 70508
(318) 264-6630

For General Information and Reference Materials, please contact the appropriate State Agency listed below:

Louisiana

Louisiana Cooperative Extension Service
Louisiana State University
Knapp Hall
Baton Rouge, LA 70803-1900
(504) 388-6998

Louisiana Department of Environmental Quality
Office of Water Resources
P.O. Box 82215
Baton Rouge, LA 70884-2215
(504) 765-0585

Louisiana Department of Agriculture and Forestry
P.O. Box 94302
Baton Rouge, LA 70804-9302
(504) 922-1234

Soil Conservation Service
U. S. Department of Agriculture
3737 Government Street
Alexandria, LA 71302
(318) 473-7751

New Mexico

New Mexico Cooperative Extension Service
New Mexico State University
P.O. Box 3AE
Las Cruces, NM 88003
(505) 646-6404

New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502
(505) 827-2850

New Mexico Department of Agriculture
Box 30005, Department 3189
Las Cruces, NM 88003-0005
(505) 646-3007

Soil Conservation Service
U. S. Department of Agriculture
517 Gold Avenue SW, Room 3301
Albuquerque, NM 87102-3157
(505) 766-2173

Oklahoma

Oklahoma Cooperative Extension Service
Oklahoma State University
214 Agricultural Hall
Stillwater, OK 74078-0469
(405) 744-5425

Oklahoma Department of Agriculture
2800 N. Lincoln Blvd.
Oklahoma City, OK 73105-4298
(405) 521-3864

Oklahoma Conservation Commission
2800 N. Nincoln Blvd., Room 160
Oklahoma City, OK 73105
(405) 521-2884

Soil Conservation Service
U.S. Department of Agriculture
USDA Agricultural Center Bldg.
Stillwater, OK 74074
(405) 624-4488

Texas

Texas Agricultural Extension Service
Texas A & M University
303 Agricultural Engineering Bldg.
College Station, TX 77843-2121
(409) 845-7451

Texas Water Commission
Agricultural Section
P.O. Box 13087
Austin, TX 78711-3087
(512) 475-4573

Texas Department of Agriculture
P.O. Box 12847
Austin, TX 78711
(512) 463-7476

Texas State Soil and Water Conservation Board
311 North 5th
Temple, TX 76503
(817) 773-2250

Soil Conservation Service
U. S. Department of Agriculture
W.R. Poage Bldg.
101 S. Main Street
Temple, TX 76501-7682
(817) 774-1261

REFERENCE MATERIALS

Following is a list of available sources for reference material on proper operations and maintenance of concentrated animal feeding operations. Also included are sources for reference of preferred management practices as recognized by the agricultural industry.

GENERAL REFERENCES

National Engineering Handbook Part 651, Agricultural Waste Management Field Handbook (1992) P.O. Box 2890, Washington, D.C. 20013.

Livestock Waste Facilities Handbook, MPWS-18, Extension Agricultural Engineer (1985) University of Missouri, Columbia, MO 65211.

STANDARDS 1992, Standards, Engineering Practices and Data, 39th Edition (1992) American Society of Agricultural Engineers, 2950 Niles Road, St. Joseph, MI 49085-9659.

"25 Year, 24 Hour Rainfall (Inches)," Technical Paper 40, United States Department of Commerce, Weather Bureau, Washington, D.C.

LAND APPLICATION

"Animal Waste Utilization on Cropland and Pastureland," L.R. Shuyler (1979), USDA Utilization Research Report No. 6, Washington, D.C.

"Animal Waste Utilization on Cropland and Pastureland," U. S. Environmental Protection Agency (1979), EPA-600/2-79-059. U.S. Government Printing Office, Washington, D.C.

"Swine Lagoon Effluent Applied to Coastal Bermudagrass: I. Forage Yield, Quality, and Element Removal," J.C. Burns, P.W. Westerman, L.D. King, G.A. Cummings, M.R. Overcash, L.Goode (1985). Journal of Environmental Quality, 14:9-14.

"Effectiveness of Forest and Grass Buffer Strips in Improving the Water Quality of Manure Polluted Runoff," R.C. Doyle, G.S. Stanton (1977). ASAE Paper 77-2501, St. Joseph, MI 49085.

"Corn Growth and Composition in Relation to Soil Fertility: II. Uptake of N, P and K and their Distribution in Different Plant Parts During the Growing Season," J.J. Hanaway (1962). Agron. Journal 54:217-222.

"Changes in the Physical Properties of Soil by Fertilizer and Manure Application," T.D. Biswas, B.M. Ingole and K.K. Jha (1969). Fertilizer News, Vol. 14, No. 7, pp. 23-26.

"Animal Waste Utilization on Cropland and Pastureland. A Manual for Evaluation Agronomic and environmental Effects," United States Department of Agriculture (1979). Sci. and Educ. Adm. Util. Res. Rep. 6.

"Site Selection as Related to Utilization and Disposal of Organic Wastes," J.E. Witty, K.W. Flach (1977). American Society of Agron., Soils for Management of Organic Wastes and Wastewaters, Chapter 13.

WASTE CHARACTERISTICS

"Soil Nutrient Content of Manures in an Arid Climate," R.M. Arrington, C.E. Pachek (1980). Proceedings of Fourth International Symposium on Agricultural Waste, Amarillo, Texas.

"Livestock Waste Characterization-a New Approach," C.L.Barth (1985). Agricultural Waste Utilization and Management, Proceedings of the Fifth International Symposium of Agricultural Wastes, ASAE, St. Joseph, MI, p. 286.

"Available Nutrients in Livestock Waste," P.W. Westerman, L.M. Safley, Jr., J.C. Barker, G.M. Chescheir, III (1985). Agricultural Waste Utilization and Management, Proceedings of the Fifth International Symposium of Agricultural Wastes, ASAE, St. Joseph, MI, p. 285.

WASTE MANAGEMENT PRACTICES

"Vegetative Filter Treatment of Dairy Milkhouse Wastewater," C.B. Schwer, J.C. Clausen (1989). Environmental Quality, 18:446-451.

"Cattle Feedlot Waste Management Practices for Water and Air Pollution Control," Dr. J.M. Sweeten (1990). Texas Agricultural Extension Service, B-1671.

"Dairy Manure Handling Systems and Equipment," Dr. J.M. Sweeten (1983). Texas Agricultural Extension Service, B-1446.

"Pollution Control for Dairy Farms," Dr. J.M. Sweeten (1982). Texas Agricultural Extension Service, B-1386.

"Waste Management System," SCS Conservation Practice Standard, Code 312 (1979). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Waste Storage Pond," SCS Conservation Practice Standard, Code 425 (1979). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Fencing," SCS Conservation Practice Standard, Code 382 (1980). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Waste Storage Structure," SCS Conservation Practice Standard, Code 313 (1980). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Filter Strip," SCS Conservation Practice Standard, Code 393 (1982). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Pond Sealing or Lining," SCS Conservation Practice Standard, Code 521 (1984) United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Waste Treatment Lagoon," SCS Conservation Practice Standard, Code 359 (1984). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Diversion," SCS Conservation Practice Standard, Code 362 (1985). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Guide on Design, Operation and Management of Anaerobic Lagoons," Technical Note Ser. 711, SNTC (1985). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Interim Engineering Standard for Swine and Poultry Disposal Pit," SNTC (1987). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Interim Standard for Dead Poultry Composting," (1989). United States Department of Agriculture. Soil Conservation Service, Auburn, Alabama.

"Design and Construction Guidelines for Considering Seepage from Agricultural Waste Storage Ponds and Treatment lagoons," Technical Note Ser. 716 (1990). United States Department of Agriculture. Soil Conservation Service, Fort Worth, Texas.

REFERENCES FOR OKLAHOMA

Oklahoma Soil Fertility Handbook, 1st Edition (1977). Oklahoma State University Cooperative Extension Service in cooperation with the Oklahoma Plant Food Education Society.

"Oklahoma Facts: Land Application of Livestock Manure," Fact Sheet 1710. Oklahoma State University Cooperative Extension Service.

"Oklahoma Facts: OSU Soil Test Calibrations," Fact Sheet 2225. Oklahoma State University Cooperative Extension Service.

Livestock Waste Facilities Handbook, MWPS-18. Midwest Plan Service, Iowa State University, Ames, Iowa 50011.

REFERENCES FOR TEXAS

"25 Year, 24 Hour Rainfall (Inches)," Technical Paper 40, United States Department of Commerce, Weather Bureau, Washington, D.C.

"Minimum Storage Period in Days," Texas Water Development Board, Report No. 64, Austin, Texas.

"Prediction of Runoff from Feedlots Using Soil Cover Complex Processes," National Engineering Handbook, Section 4, United States Department of Agriculture, Washington, D.C.

[FR Doc. 93-1050 Filed 2-5-93; 8:45 am]
BILLING CODE 6560-50-C

federal register

Monday
February 8, 1993

Part III

Environmental Protection Agency

40 CFR Parts 700, 720, 721 and 723

Premanufacture Notification; Revisions of Notification Regulations, Exemptions for Chemicals in Quantities of 1,000 Kilograms or Less, and for Polymers, and Amendment to Expedited Process for Issuing Significant New Use Rules; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 700 and 723

[OPPTS-50596; FRL-3890-4]

RIN 2070-AC14

Premanufacture Notification Exemption; Revision of Exemption for Chemical Substances Manufactured in Quantities of 1,000 Kilograms or Less Per Year; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires that persons notify EPA before they manufacture or import a new chemical substance for commercial purposes. Section 5(h)(4) of TSCA authorizes EPA, upon application and by rule to exempt the manufacturer or importer of any new chemical substance from the provisions of section 5 if the Agency determines that the manufacture, processing, distribution in commerce, use, or disposal of the substance will not present an unreasonable risk of injury to health or the environment. EPA is proposing to amend the current TSCA section 5(h)(4) limited exemption defined at 40 CFR 723.50 for persons who manufacture certain chemical substances in quantities of 1,000 kilograms or less per year. This proposed amendment would increase the volume limit to 10,000 kilograms or less a year. Also, this notice proposes to add a new section 5(h)(4) exemption category for certain chemical substances with low environmental releases and human exposures. To ensure that these chemical substances will not present an unreasonable risk, EPA has included procedural safeguards, including a 30-day review, and other conditions in the exemption.

DATES: Comments must be received by April 9, 1993. If requested, EPA will conduct public hearings on the proposed rule amendments. Requests to make an oral presentation must be received by April 9, 1993.

ADDRESSES: All comments and requests to speak at the public hearing must be sent to: TSCA Document Control Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (Phone: 202-260-1532).

Comments should include the docket control number. The docket control number for this amendment is OPPTS-50594. Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate (with additional sanitized copies if CBI is involved). Comments on this proposed rule will be placed in the rulemaking record and will be available in the TSCA Public Docket Office, Rm. NE-G-004 at the above address between 8 a.m. and 12 noon and 1 p.m. and 4 p.m., Monday through Friday, excluding public holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document, along with three other related documents, OPPTS-50593, 50594, and 50595, is available as an electronic file on *The Federal Bulletin Board* at 9:00 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512-1387 or call (202) 512-1530 for disks or paper copies. This document and the three related documents are available in Postscript, Wordperfect, and ASCII.

The exemption for chemical substances manufactured in quantities of 1,000 kilograms or less per year became effective on August 26, 1985. The supporting rationale and background for that exemption were published at 50 FR 16477, April 26, 1985 and 47 FR 33896, August 4, 1982. While general background information is presented here, readers should also consult the preambles for those notices for further information on the objectives and rationale for the rule and the basis for the TSCA section 5(h)(4) "will not present an unreasonable risk" finding.

I. Background

A. Authority

Section 5(a)(1) of TSCA (15 U.S.C. 2604 (a)(1)) requires any person who intends to manufacture or import a new chemical substance to notify EPA 90 days before manufacture or importation begins. Section 5(h)(4) of TSCA (15 U.S.C. 2604 (h)(4)) allows the Administrator, by rule, to grant an exemption from any or all of the requirements of section 5 if he or she determines that the manufacture, processing, distribution, use, or disposal of a substance will not present an unreasonable risk of injury to health or the environment.

B. History

In early 1981, EPA received a petition from the Chemical Manufacturers Association (CMA) requesting exemptions from certain provisions of section 5 of TSCA for: (1) Site-limited intermediates; (2) chemical substances produced in quantities of 25,000 pounds or less per year; and (3) polymers whose precursor monomers are on the TSCA Inventory. On August 4, 1982, EPA proposed regulations for site-limited intermediates and for chemical substances produced in quantities of 1,000 and 10,000 kilograms or less per year (47 FR 33920). Also on April 4, 1982 (47 FR 33924), EPA proposed regulations for exempting certain polymers, and promulgated final regulations on November 21, 1984 (49 FR 46066). Final regulations for chemical substances produced in quantities of less than 1,000 kilograms per year were promulgated by the Agency on April 26, 1985 (50 FR 16477). Based on public comments, and the requirements under section 5(h)(4) of TSCA, the Agency decided to exempt only chemical substances produced in quantities of 1,000 kilograms or less per year from full section 5(a)(1) premanufacturing review. The Agency determined that it could not exempt site-limited intermediates or the 10,000 kilograms category chemical substances without requiring certain procedural safeguards designed to ensure low risk, such as requiring manufacturers to obtain a qualified expert review of their exemption application prior to submission. Industry commenters stated these procedural safeguards were overly burdensome. EPA decided it could not reduce those safeguards given its level of experience in 1985 and still make the required section 5(h)(4) findings that activities associated with the exempted chemical substance would not present an unreasonable risk.

In the 8 years since the low volume exemption was promulgated, EPA has enhanced its technical assessment capabilities considerably. For example, in searching for chemical analogues to assist in the review of the potential toxicity of a new chemical substance, the Agency is now able to perform automated chemical substructure searches. EPA toxicologists can now, as a result, quickly locate available toxicity data on chemicals with reactive substructures analogous to those of the new substances under review. With this and other enhancements to the review process developed since the new chemicals program began in 1977, the Agency believes that the production volume ceiling for the low volume

exemption can now be raised to 10,000 kilograms or less per year and that a new exemption for low release and exposure chemicals can be promulgated without compromising the Agency's ability to identify and protect against substances that may present an unreasonable risk of injury to human health or the environment.

For a more extensive review of the history of the low volume and the site-limited intermediate exemptions, please refer to the **Federal Register** notices cited earlier in Unit I. of this preamble.

II. Discussion of the Proposed Amendments

1. *Chemical substances manufactured at 10,000 kg or less per year.* The Agency is proposing that manufacturers of all chemical substances manufactured in quantities of 10,000 kilograms or less per year will be eligible to apply for a new exemption category. (Note that throughout 40 CFR parts 721 and 723, the term "manufacturer" is defined in TSCA section 3(8), 15 U.S.C. 2602(8), to include persons who import the specified chemical substance, and the term "manufacture" is defined to include importation.) Upon approval, manufacturers will be permitted to manufacture up to 10,000 kilograms during every 1– year period beginning on the date of review period expiration.

As with the current exemption, chemical substances will not be approved under the exemption if the Agency believes that they or their reasonably anticipated metabolites, environmental transformation products, byproducts, or impurities raise a concern for serious acute or chronic human health effects or significant environmental effects under reasonably anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal. Any submitted exemption notice will be denied if the Agency is unable to affirmatively find that manufacture, processing, distribution, use, and disposal of the exempted substance will not present an unreasonable risk of injury to human health or the environment.

The proposal provides that manufacturers requesting this exemption must submit notices 30 days prior to commencement of manufacture or import. EPA believes that the extra 9 days over the current 21–day review period will be needed to perform risk assessments for the increased number of submissions received under this expanded low volume exemption and the low release and exposure exemption category described below.

Also in keeping with the current exemption, where manufacturers provide information on human exposure controls or environmental release controls to support the exemption notice, the manufacturers must maintain those controls throughout the duration of the exemption. Exemption notices containing inadequate human exposure or environmental release controls may be conditionally denied until the submitters provide sufficient information regarding exposure controls. Manufacturers are also bound to the manufacturing sites and uses approved in their exemptions.

The Agency is proposing to modify the restriction that only one low volume exemption holder be allowed for any given substance. Under the proposal, subsequent manufacturers of a substance for which one manufacturer already holds an exemption will be permitted to submit an exemption notice; however, subsequent manufacturers must, in addition to the normal requirements, affirmatively demonstrate that approval of their exemptions will not result in additional environmental releases and human exposures which, in the aggregate, will undermine the Agency's previous determination that the manufacturing, processing, and use of the low volume substance will not present an unreasonable risk of injury to human health or the environment. Subsequent manufacturers unable to make this affirmative showing will be required to submit either a full premanufacture notice or an application under another exemption prior to commencement of commercial manufacture. To prevent companies from applying for an exemption merely to preclude a potential competitor's exemption, the Agency is proposing to require submitters to certify that they will commence commercial manufacture of the chemical substance under the exemption within 1 year of the expiration of the review period. This certification must accompany submission of the exemption notice. If manufacture does not commence within 1 year, the submitter must withdraw the exemption in writing within 1 year of the expiration of the review period.

In accordance with current practice under the present 1,000 kilogram exemption, the Agency will generally perform the risk assessment under the new exemption as if the total amount permissible under the exemption (10,000 kgs) were being produced. However, EPA is proposing to permit submitters wishing their exemptions to be reviewed based upon annual production volumes lower than 10,000 kilograms to so indicate in their initial exemption notice. Submitters who so elect, however, would be bound by their election. Submitters who subsequently wished to increase their maximum production volume under the exemption would be required to submit a new exemption notice and cross-reference the original exemption number on the cover of the notice. If the new exemption is granted, it would supersede the previous exemption.

Regarding the transition period between the existing and proposed exemption, the Agency will continue to accept exemption notices under the terms of the current 1,000 kilogram or less exemption category until the final rule altering this exemption category becomes effective. At that time, the existing 1,000 kilogram exemption category would no longer be available. All exemptions previously granted under the 1,000 kilogram exemption will remain binding and effective under the superseded provisions of 40 CFR 723.50 even though such provisions will no longer be contained in the Code of Federal Regulations; however, the proposed exemption does not contain a separate 1,000 kilogram or less category. A manufacturer or importer who was granted an exemption under the prior 1,000 kilogram per year or less exemption will be allowed to submit a new exemption notice to increase the production volume up to 10,000 kilograms per year for the same chemical substance. If a manufacturer does apply for the 10,000 kilogram exemption, its notice will be reviewed for unreasonable risk at the increased production volume. A new risk assessment will be performed based on the information submitted in the new notice. A submitter of a subsequent 10,000 kilogram exemption will be allowed to continue to manufacture under the terms of the 1,000 kilogram exemption until a regulatory decision is made on the new exemption notice. If the new notice is granted, it will supersede the 1,000 kilogram exemption.

2. *Low release and exposure chemicals.* In connection with the Agency's overall pollution prevention strategy, EPA is proposing to add a new exemption category for chemical substances with low environmental releases and low human exposures during their manufacture, processing, and use. All manufacturers and importers of new chemical substances subject to PMN requirements meeting the stated release and exposure criteria would be eligible to apply for this low release and exposure (LoREX) exemption, regardless of production volume. The LoREX exemption is intended to encourage companies to

develop manufacturing, processing, and use techniques which minimize exposures to workers, consumers, the general public, and the environment.

As with the low volume exemption, the Agency is proposing to require that the uses and manufacturing sites be restricted to those approved in the exemption notice, and that submitters also be bound to the approved release and exposure controls. EPA believes that these binding provisions of the LoREX exemption will, in many instances, prove to be an effective substitute to regulation under section 5(e) of TSCA. Thus, EPA expects this new exemption category to significantly reduce the administrative costs presently devoted to section 5(e) consent order development and review, and to permit manufacturers to commence commercial production of their new products more quickly, while ensuring against unreasonable risk to human health or the environment.

Potential submitters should be mindful that the principal focus of this exemption is on release and exposure, not toxicity. In light of this, the Agency will apply the release and exposure criteria strictly, and, although it will consider any relevant toxicological data submitted, it will be unable to conduct a thorough review of that data in many cases within the 30–day review period. A primary goal of this exemption is to minimize the time and resources required to review new chemical substance submissions; to the extent that the Agency must undertake detailed examination of the inherent toxicity of a given chemical substance, that goal is compromised and a PMN notice would be more appropriate.

To satisfy the required section 5(h)(4) findings of unreasonable risk, the submitter would first have to meet the eligibility criteria in the following Table 1 indicating that exposure to the substance, and hence the risk presented by the substance, is low:

TABLE 1.—PROPOSED LOW RELEASE/EXPOSURE (LOREX) ELIGIBILITY CRITERIA[1]

Type of Exposure or Release	Eligibility Criteria for Exemption
Human Exposure	
General Population Exposure.	
Dermal:	None
Inhalation:	None[2]
Drinking Water:	<1 mg/yr[3]
Consumer Exposure.	
Dermal:	None
Inhalation:	None
Worker Exposure.	
Dermal:	None
Inhalation:	None, unless adequate protection provided
Environmental Release	
Ambient Surface Water Releases.	No releases resulting in surface water concentrations above 1 ppb[4]
Ambient Air Releases	No incineration releases above 1 μg/m³ maximum annual average concentration [5]
Land/Groundwater Releases.	No releases to landfill unless submitter demonstrates that the exempted substance has negligible ground-water migration potential

[1] This table lists the minimum criteria required to apply for the exemption. Based on the review of the notice, lower concentrations may be required by the Agency for substances with potential for carcinogenic, neurotoxic, or other effects.

[2] No inhalation exposure permitted except as provided under the ambient air incineration criteria.

[3] Estimated average dosage resulting from drinking water exposures in streams with maximum allowable concentration permitted under ambient surface water criteria (1 ppm).

[4] Concentration to be calculated using methods prescribed in 40 CFR 721.90.

[5] Using following formula: (kg/day release after treatment) X (release days/year) X 9.68 X 10^6 μg/m³.

To satisfy the human exposure side of the eligibility criteria, the submitter would have to show that there are no exposures to consumers or the general public (except as provided under the surface water and ambient air criteria) inherent in the proposed manufacturing, processing, or uses of the substance, and that any worker exposure which is likely to occur will be adequately controlled through use of engineering controls, work practices, and/or personal protective equipment.

In terms of environmental releases, LoREX eligibility criteria for releases to three environmental media are proposed. In assessing the potential for environmental release, the submitter should consider all routine releases from manufacture, processing, and use, including releases associated with cleaning of equipment and from disposal or cleaning of containers and packaging. For ambient surface water, the Agency is proposing that submitters either (1) prevent all direct and indirect releases of the exempted substance to surface waters; or (2) demonstrate that any releases to water that may occur will result in surface water concentrations of the substance that are no greater than 1 part per billion (ppb) using the surface water concentration calculation method described in 40 CFR 721.90. Based on Agency worst case assumptions for drinking water exposure estimates, surface water concentrations of 1 ppb will result in human drinking water exposures at or below the 1 mg/year LoREX drinking water criteria in nearly every case; therefore, compliance with the drinking water exposure criteria will be presumed from compliance with the 1 ppb surface water level. The Agency will reserve the right, however, to require lower surface water concentrations on a case-by-case basis when concerns for carcinogenicity, neurotoxicity, or other serious chronic effects are raised, or under conditions where actual drinking water exposures are likely to significantly exceed the 1 mg/yr dosage.

The proposed LoREX eligibility criterion for maximum annual average ambient air release concentration from incineration is 1 μg/m³. This level was derived from air exposure modeling estimates of maximum ground level concentrations from incinerator stacks, using worst case meteorological data sets. To determine whether a particular substance meets the criteria, submitters would calculate exposure levels using the method described in Table 1. As with drinking water exposures, the Agency may require lower air release levels in individual cases if concerns for chronic health effects are raised for the exempted substance.

For land/groundwater disposal, EPA is proposing that LoREX substances not be disposed of by landfill or other land disposal methods unless the submitter demonstrates that the groundwater migration potential of the substance is negligible. To make such a demonstration, a submitter will be required to provide data on the biodegradation and leaching potential of the exempted substance, or other data which clearly establishes that significant releases to groundwater will not occur. EPA suggests the following core set of tests to establish groundwater migration potential:

(a) An inherent biodegradability in soil test (40 CFR 796.3400).

(b) An anaerobic biodegradability of organic chemicals test (40 CFR 796.3140).

(c) Depending on the substance's chemical properties, either a sediment and soil adsorption isotherm test (40 CFR 796.2750) or a soil adsorption isotherm test (40 CFR 796.2700).

Although it is difficult to state in advance precisely what combinations of results from the above testing would clearly establish that the groundwater migration potential of a chemical substance is "negligible", some broad parameters may be given. For example, manufacturers who perform soil adsorption testing that result in values

for the logarithm of the soil adsorption coefficient ("log K_{oc}") of their new chemical substances of 4.5 or greater will generally be found to have satisfied the "negligible groundwater migration potential" standard, unless persistent in the environment. Similarly, biodegradation test data demonstrating half-lives of chemical substances of under 1 week, or complete degradation in under 2 weeks, would satisfy the LoRex criterion in most instances. Hydrolysis data showing that a chemical substance hydrolyzes at a rapid rate would also generally be accepted by the Agency. Chemical substances which do not show either a 4.5 or greater Log K_{oc} value alone or a half-life of under 1 week alone may nonetheless qualify for the LoRex exemption if the two values in combination, or together with other relevant data, support a conclusion that significant amounts of the substances will not reach aquifers.

EPA invites public comment on this and other generic criteria which might be useful in the groundwater migration determination. The Agency also intends to continue encouraging initiation of any testing. Such consultation frequently results in more relevant data and can often lower the submitters' test costs. Upon approval of a LoREX exemption, the submitter would be bound to the continuous use of the exposure and release controls described in the approved exemption, as well as the listed uses and manufacturing sites. The Agency will deny an exemption notice notwithstanding satisfaction of the exposure-based exemption criteria if it believes it cannot support the affirmative finding required under section 5(h)(4) of TSCA that the manufacture, processing, distribution, use, and disposal of the chemical substance, under the conditions described in the notice, will not present an unreasonable risk to human health and the environment.

EPA solicits comment on whether the LoRex exemption criteria are set at a reasonable level to allow new chemical substances with de minimis releases and exposures to qualify for the exemption. Are there alternative exemption criteria that would represent a reasonable proxy for de minimis exposure?

3. *Exemption notices.* To simplify the submission of low volume (LVE) and LoREX exemptions, and Agency review of them, EPA is proposing to require use of the PMN form (EPA Form 7710–25). Thus, submitters should supply the usual PMN information on chemical identity, impurities, trade names, production volume, uses, manufacturing sites, environmental release, and worker exposure. Given the importance of release and exposure information to the disposition of LVE and LoREX exemption notices, submitters should include as much information on these subjects as possible, including, where applicable, such items as an assessment of the potential for dermal and inhalation exposure, including magnitude, frequency, and duration; specific respirators used (e.g., NIOSH/MSHA-certified 19C Type C supplied-air respirator operated in pressure demand or positive pressure mode and equipped with a full face piece); specific information on the dermal protective equipment used (including any information on permeation); other control methods used (including information on their effectiveness); environmental release controls (including information on their efficiency); as well as details on work practices, standard operating procedures, etc. In assessing the potential for exposure, the submitter would be required to consider all routine worker activities during manufacture, processing, and use, including operations such as materials transfer, drumming, packaging or loading and associated unloading operations, sampling, etc. In assessing the potential for environmental release, the submitter would consider all routine releases during manufacture, processing, and use, including releases from processing, cleaning of equipment, disposal of empty containers, "off-spec" materials, processing waste, samples, etc.

Bald statements such as "glove boxes will be used" or "the chemical will be manufactured in a closed system" would be insufficient to document that worker exposure requirements of the LoREX exemption have been satisfied. For example, even manufacturing facilities controlling reactor operations via isolated control rooms may still involve potential worker exposures during such operations as sampling and drumming. Additional controls may be needed for these operations. Also, the efficiencies of such engineering controls as glove boxes or local exhaust ventilation (LEV) will vary according to manufacturer design, installation method, and user operations. Factors which may affect the operating efficiency of LEV include hood-to-source location, worker intervention, equipment installation, maintenance practices, and cross drafts. Because of such factors, actual efficiency may be lower than that claimed by the equipment manufacturer. Ventilation systems should be designed and operated in accordance with Occupational Safety and Health Administration (OSHA) standards such as 29 CFR 1910.94, and current recommendations of the manual Industrial Ventilation by the American Conference of Governmental Industrial Hygienists, and ANSI Z9.2 Fundamentals Governing the Design and Operation of Local Exhaust Systems published by the American National Standards Institute. The submitter would provide as much information as possible to demonstrate the effectiveness or efficiency of control methods, and procedures used to maintain the stated effectiveness of efficiency over time, as well as details on programs for worker safety training and hazard communication.

To the extent it is known or reasonably ascertainable by the submitter, physical and chemical property information for the chemical substance (e.g., vapor pressure, melting point, boiling point) would also be required under these proposed exemptions. This information would be listed on the last page of the PMN form. In EPA's experience, such information is generally available and would be helpful in assessing exposure controls and better characterizing the potential risk of the chemical substance.

The Agency believes use of the PMN form would prove beneficial to both it and industry, and seeks comments from experienced PMN and LVE submitters on this point. By providing a standard format for the required information, EPA expects to decrease the frequency with which it would have to conditionally deny incomplete exemption notices, thereby decreasing the length of time submitters would have to wait for disposition of their exemption notices and the Agency resources devoted to reviews.

Submissions not containing all of the required information would be declared incomplete. To reinitiate a notice which has been declared incomplete, a submitter would have to submit a complete new exemption notice form containing all the required information; partial submissions sent to EPA to supplement notices declared incomplete would not be accepted. Photocopied pages from previously submitted exemption forms would be accepted provided that the certifications page contains an original signature.

The proposal retains the provision which requires manufacturers of substances produced under the exemption to submit to EPA any test data or other information they obtain which indicates that the substance may not qualify for the exemption. The

proposal also adopts the current PMN requirement that requires submission of any new information of which the manufacturer obtains possession, control, or knowledge during the review period if that information materially adds to, changes, or otherwise makes significantly more complete the information included in the notice.

4. *EPA review of notices.* EPA is proposing, and requesting comment on, the requirement that submitters submit exemption notices 30 days prior to intended manufacture of the low volume or LoREX substance. The Agency believes that an increase from 21 days to 30 days will be necessary in order to accommodate the projected increase in number of exemption notices under the higher low volume ceiling and new LoREX category. EPA is aware a longer exemption review period may make the exemptions less attractive; however, it believes that the modest increase to 30 days proposed is imperative to conduct the type of reviews necessary to support the legal finding that the exempted substance will not present an unreasonable risk of injury to human health or the environment. Moreover, EPA believes that the existence of these two exemptions categories would, on average, significantly expedite the introduction of many new products into the marketplace.

5. *Determination that a chemical substance will be denied the exemption*— a. *During the review period.* Under this proposal, EPA would determine that a substance is ineligible for the low volume or LoREX exemptions if it finds that the new chemical substance does not meet the terms of the exemption, or that there are issues concerning toxicity or exposure that require further review which cannot be accomplished within the 30-day review period. Such issues that may require further review include serious acute or chronic human health effects or significant environmental effects under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal.

If EPA determines during the review period that an exemption notice should be denied, the Agency will notify the manufacturer by telephone that the substance is denied the exemption. The submitter will subsequently be notified by letter The letter will explain the reasons for EPA's determination. The submitter will then have the option of resubmitting the exemption notice with explanatory or additional information, submitting a PMN, or not manufacturing the chemical substance.

b. *After the review period expires.* The Agency is proposing to amend the current provisions relating to revocation of exemptions after expiration of the review period. Under the proposal, a revocation could be effected if EPA, based on new information, determines that it can no longer support the "no unreasonable risk" finding required under section 5(h)(4) of the Act. This is a change from the corresponding provision of the current exemption which permits revocations whenever EPA determines that the substance "does not meet the terms of this section."

6. *Inventory status.* For the expanded low volume exemption category for substances produced in quantities up to 10,000 kilograms/year, the Agency is proposing to continue the policy of not adding such substances to the TSCA section 8(a) Inventory of existing chemical substances. Similarly, EPA is proposing to not add substances produced under the LoREX exemption to the 8(a) Inventory. Therefore, subsequent manufacturers of chemical substances for which exemptions have been granted to other companies under these two categories will be required to submit independent exemption notices or PMNs before commencing nonexempted commercial production of those substances.

7. *Recordkeeping.* The proposed rule would require manufacturers and importers to maintain records on (a) the production volumes of the chemical substance for which an exemption was granted, and (b) documentation of information in the exemption notices and compliance with the terms of the exemption. The records would be maintained for 5 years after the date of their preparation. These records would be kept at the submitter's manufacturing site(s). Recordkeeping at the site of manufacture is a new requirement. The Agency has found that it has been difficult to determine compliance with the regulations when records are not kept at the site. Also under this proposal, EPA would have the authority to require the manufacturer of an exempt substance to submit copies of these records to EPA upon written request. Manufacturers would be required to provide these records within 15 days of the written notification by EPA. This section in the proposed rule is intended to supplement the inspection and subpoena authorities of section 11 of TSCA.

8. *User fees.* Section 26(b) of TSCA authorizes EPA to require, by rule, the payment of a reasonable fee from any person required to submit data under section 4 or 5 of TSCA. Currently, EPA requires a user fee for PMNs, certain PMN exemption notices, and significant new use notices submitted under TSCA section 5(a) and 5(h). EPA is proposing to amend 40 CFR part 700 to require manufacturers and importers to pay fees for low volume and LoREX exemption notices. Currently, there is no such user fee requirement associated with the low volume exemption. The proposed fee would be $100 for small business concerns, and $2,500 for all others.

The fee for PMNs, certain exemption notices, and SNURs was originally promulgated on August 17, 1988. The supporting rationale and background for this rule is published in the **Federal Register** of April 20, 1987 (52 FR 12940) and the **Federal Register** of August 17, 1988 (53 FR 31248). These two documents should be consulted for further information on the objectives and rationale for the user fee rule.

9. *Customer notification.* The Agency is proposing to retain the requirement that manufacturers notify processors and industrial users of the use restrictions and of any controls specified in the exemption notice. Such notification may be given by means of a container labeling system, written notification, or any other method that adequately informs recipients of the applicable use restrictions or controls. As with the existing LVE, the proposal also requires that manufacturers (a) immediately cease distribution to any customers who violate use or control restrictions, and (b) notify the Agency within 15 days of learning of such violations.

To ensure compliance with the LoREX criterion, the proposal requires further that LoREX exemption holders distribute LoREX substances only to persons who agree in writing to not further distribute the substances until they have been reacted or otherwise rendered into a physical form or state in which releases and exposures above the LoREX criterion will not occur. The Agency recognizes that this distribution restriction may be problematic for manufacturers of some substances used in multi-tiered markets, but believes that some form of control over distribution is necessary. Commenters are encouraged to suggest alternative methods EPA might employ to ensure that distribution of the LoREX substance beyond manufacturers' customers will not present an unreasonable risk to human health or the environment.

10. *Transfer of exemptions.* Current Agency policy generally does not recognize transfer of exemption rights between manufacturers; however, given the increased frequency over the last several years of corporate mergers,

acquisitions, buy-outs, technology transfers, and other forms of corporate succession, EPA believes that it is appropriate to reevaluate its exemption transfer policies in light of the proposed amendments and requests comments on this issue.

III. Rationale

A. Chemical Substances Manufactured at 10,000 Kilograms or Less Per Year

To better utilize its limited resources and lessen regulatory burdens on industry, the Agency undertook an examination of the review process for PMNs and PMN exemption notices to determine whether it was advisable to expand the categories of new chemical substances eligible for PMN exemptions. One of the first exemptions identified through this examination was the current exemption for new chemical substances manufactured in quantities of 1,000 kilograms or less per year. EPA believed that significant resource savings could be realized if the ceiling for the exemption could be raised to a level which would expand the pool of eligible new chemical substances while still permitting the Agency to make the requisite "will not present an unreasonable risk" statutory finding.

Those familiar with the PMN program will recall that in 1982 when the current low volume exemption ("LVE") was originally proposed (47 FR 33920), the Agency included a separate category for chemical substances manufactured in quantities of 10,000 kilograms or less per year. However, that portion of the proposal was never promulgated. This was due mainly to uncertainty over the number and types of notices that would be received under the higher volume category, and also to an inability to reconcile industry concerns over some of the additional safeguards imposed upon the higher volume category and the Agency's belief that such safeguards were necessary (see the discussion in Unit I. of this preamble).

With the benefit of 8 years of experience under the 1,000 kilogram exemption category and the Agency's enhanced ability to gauge toxicity of new chemical substances based upon structural activity relationships, EPA is confident that it can now review a larger pool of chemical substances under the low volume exemption and identify within an abbreviated review period those substances which may pose an unreasonable risk to human health or the environment.

The basic rationale for proposing an expansion of the low volume exemption category is the same as that for proposing the exemption initially: chemical substances produced in lower quantities generally involve correspondingly lower human exposures and environmental releases, and consequently, present generally less risk than high volume substances. Beyond this, the Agency believes that the low volume exemption has been a very successful regulatory mechanism as measured by the level of EPA administrative resources needed to implement it and the relative burden it places on manufacturers. Because of this success, EPA believes that both its interests and the interests of industry and the public will be served by enlarging the portion of new chemical substances which may be manufactured under the exemption.

B. Low Release and Exposure (LoREX) Chemical Substances

In addition to the production-volume-based category described above, EPA is proposing establishment of a new TSCA section 5(h)(4) exemption category based on low levels of environmental release of, and human exposure to the new chemical substance. Eligibility would be independent of production volume level.

The Agency believes that the concept of basing an exemption on low release and exposure offers several potential advantages over a volume-based exemption. First, an exposure-driven exemption generally provides a more direct gauge on the magnitude of risk presented by a given new chemical substance. Production volume alone is only an indirect indicator of exposures and releases. Secondly, EPA believes that the existence of a LoREX exemption will encourage pollution prevention (source reduction) techniques by rewarding manufacturers able to meet the low release and exposure criteria with more timely regulatory decisions, and in many cases, with less burdensome regulatory controls. Such a result would entail substantial time and resource savings for both EPA and industry.

1. *LoREX criteria* — a. *Human exposure.* In determining the appropriate criteria for defining the types and/or levels of exposure which should constitute "low exposure" to humans, EPA considered three distinct populations: workers, consumers, and the general population. EPA believes that, for purposes of this exposure-based exemption, any direct exposures to the latter two groups would be, in the context of an abbreviated review period, inconsistent with the Agency's statutory obligation under section 5(h)(4) to affirmatively find that the exempted substances will not present an unreasonable risk to human health. Therefore, the Agency believes that any consumer and/or general population exposures (other than the negligible drinking water and ambient air exposures discussed later in this preamble) should automatically disqualify new chemical substances from LoREX exemption eligibility.

Exposures to workers, on the other hand, are fundamentally different than consumer and general population exposures in that they may be more readily monitored and controlled through engineering controls, workplace practices, and/or protective equipment requirements. Therefore, the Agency believes that it may, consistent with its section 5(h)(4) obligation, approve a high percentage of LoREX exemption notices where appropriate control measures are instituted in the workplace.

Workplace exposures may occur through inhalation, dermal contact, or ingestion. For dermal/ingestion exposures, the Agency believes it most appropriate to require manufacturers applying for a LoREX exemption to comply with the general dermal exposure requirements used in section 5(e) consent orders; namely, to require all workers reasonably likely to be exposed to LoREX substances to be provided with, and required to wear, chemical protective equipment which provides a barrier to prevent all dermal exposure to the substance. Chemical protective clothing used to provide this barrier must be demonstrated to be impervious to the substance under the expected conditions of use and duration of exposure. Such demonstration could be accomplished under 40 CFR 721.63(a)(3)(i)-(ii) by actually testing the material used to make the chemical protective clothing and/or by evaluating the specifications from the manufacturer or supplier of the chemical protective clothing to establish that the chemical protective clothing will be impervious to the exempted substance alone and in likely combination with other chemical substances in the work area.

Regarding inhalation exposure, the Agency will expect submitters for LoREX exemption notices to have (i) identified the workplace operations where inhalation exposure is likely to occur; (2) assessed the magnitude, frequency, and duration of potential exposure; (3) assessed the effectiveness of the various exposure controls; and (4) selected the method or combination of methods that will provide workers with the appropriate protection for the given workplace. While the Agency strongly encourages submitters to reduce workplace exposures at their source,

where feasible, submitters could also support a claim of low worker inhalation exposure based on the use of appropriate respiratory protection equipment. The Agency believes it most appropriate for a submitter to comply with the general requirements regarding respiratory protection used in TSCA section 5(e) consent orders, which stipulate the use of respiratory protection in accordance with the National Institute of Occupational Safety and Health (NIOSH) regulations at 30 CFR part 11, and the Occupational Safety and Health Administration (OSHA) regulations at 29 CFR 1910.134. Similarly, the inherent physical or chemical properties of the substance submitted for an exemption may form the basis of a low exposure claim, as in a nonvolatile dye manufactured, processed, and used only in solution, such that inhalation to particulates will not occur.

b. *Environmental release*— i. *Water releases.* The proposed LoREX water release eligibility criterion of <1 ppb surface water concentration was established on the basis of EPA's experience in conducting environmental risk assessments on PMN substances. The concentration level is to be estimated by the submitter using the method described in 40 CFR 721.90. Based on EPA's 14 years of PMN experience, aquatic toxicity concern levels have only very rarely been established at levels below 1 ppb. Thus, EPA is confident that the vast majority of LoREX exemption notices satisfying this criterion will not present an unreasonable risk of acute or chronic aquatic toxicity, and that the Agency's risk assessment capabilities will identify those few exemptions which may require more strict concentration levels to protect against potential aquatic risks.

ii. *Air releases.* The proposed LoREX air release eligibility criterion of 1 $\mu g/m^3$ was, like the ambient surface water criterion, selected on the basis of experience gained in conducting risk assessments on over 18,000 PMN chemical substances since 1978. At this maximum annual average concentration, EPA believes that, using worst case estimates, the maximum human exposures downwind from incinerators will be toxicologically insignificant for most of the chemical substances it is likely to review under the LoREX exemption. As noted above, however, the Agency may require individual submitters to adhere to lower release levels for substances for which chronic toxicity concerns are raised during the risk assessment.

The proposed methodology for calculating maximum annual average concentration (see Table 1, footnote 5) to be used by exemption notice submitters was based on computer modeling similar to that used by the Agency in the PMN review process. Those interested in more detail on this methodology should consult the docket.

Submitters should also be aware that, although the proposal has not established generic eligibility criteria for fugitive air emissions unrelated to incineration, the Agency will review the potential for such emissions on a case-by-case basis, and will deny exemptions if the air emissions reach such levels as to undermine the Agency's ability to conclude that the substances in question will not present an unreasonable risk.

iii. *Land/groundwater releases.* The Agency is proposing to exclude from eligibility all chemical substances which will be disposed of via landfill unless the submitter demonstrates that the exempted substance has negligible ground-water migration potential. This "zero release" standard was deemed most appropriate because the Agency was unable to develop a broadly applicable method for estimating groundwater concentrations of chemical substances based on landfill disposal volume. Given the many variables involved in making such estimates (e.g., migration rates, biodegradation rates, sediment/soil adsorption rates), EPA does not believe it will be possible to develop a generic model for estimating groundwater concentrations for a significant number of substances with sufficient reliability to support the requisite "no unreasonable risk" finding. Consequently, the Agency believes that, in the context of an abbreviated review period, where in-depth case-by-case assessments of groundwater leaching potential are infeasible, prudence dictates that zero release be the primary standard.

Potential LoREX exemption submitters with no viable alternatives to landfill disposal would be given the option under the proposal of demonstrating to the Agency's satisfaction that their substance will not migrate to groundwater. A list of suggested tests to establish groundwater migration potential is contained in Unit II.A.2. of this preamble. If such a demonstration is made, a submitter would be permitted to landfill excess quantities of the exemption substance up to the amounts approved in its exemption. In all cases, however, the Agency strongly encourages submitters to strive for total elimination of releases through employment of the best available pollution prevention (source reduction) techniques.

IV. Major Alternatives Considered

A. Maximum Annual Production Limit

As an alternative to the 10,000 kilogram annual production limit proposed in this notice, the Agency considered raising the low volume production ceiling to either (1) 5,000 kilograms; or (2) 25,000 kilograms with a toxicity testing requirement.

Based on PMN data, EPA estimated that a 5,000 kilogram ceiling would increase the pool of chemical substances eligible from the current 1,000 kilogram exemption by 10 percent, or 21 percent of all PMN submissions. Although this increase is not insignificant, the Agency believes that it would not utilize this exemption to the extent possible, and that a higher volume ceiling, benefiting both EPA, the public, and industry, could be proposed consistent with the Agency's statutory mandate to make the "no unreasonable risk" finding; thus, EPA favored the 10,000 kilogram alternative over the 5,000 kilogram alternative.

The 25,000 kilogram option, with a "minimum toxicity data set" requirement, was also considered by the Agency during development of the proposed rule. This higher volume ceiling was projected to encompass approximately 38 percent of all new chemical submissions, a 27 percent increase over the number of submissions under the current exemption. Although EPA believes that increasing the maximum volume to this level could potentially save both it and industry considerable time and resources for a large number of new chemical substances, this option raised a number of concerns. Chief among those concerns was the cost of testing. If the Agency were to require LVE submitters to conduct the same "core set" of health and ecotoxicity testing it now requires of submitters of high volume/high exposure PMN substances under its "exposure-based" criteria pursuant to section 5(e)(1)(A)(ii)(II) of TSCA, the average per chemical cost of such testing would be over $50,000. Even if such a data development requirement were delayed until a specified volume of the chemical substance was produced, there is considerable uncertainty over how many potential submitters would find that form of an exemption preferable to a PMN submission. On the other hand, if EPA were to scale back the data development requirements, there is doubt that the Agency could make the requisite "no unreasonable risk" finding for many of the submissions. Consequently, in light of these uncertainties, EPA determined that it

would be inadvisable at this time to propose a new low volume category for substances produced in the 10,000 to 25,000 kilogram range.

B. Site-limited Intermediates

The Agency originally proposed a site-limited intermediate (SLI) exemption category in 1982 but, as with the proposed 10,000 kilogram low volume category, never promulgated a rule for that category due to industry criticism of the proposed procedural safeguards and EPA's uncertainties over making the "no unreasonable risk" finding for this class of substances without such safeguards. EPA considered reproposing the SLI exemption category in this rulemaking, but decided against doing so mainly because it believes that most, if not all, SLI chemicals which would be approved under an SLI exemption would fall within the scope of the LoREX exemption category; therefore, the Agency believes that a separate SLI exemption is unnecessary. Nevertheless, EPA is outlining the parameters of an SLI exemption alternative in this section to solicit public comment on this concept.

If proposed as a separate exemption category, the SLI exemption would be available to all domestic manufacturers of chemical substances satisfying the definition of "site-limited intermediates", independent of annual production volume. Under the 1982 proposal, an "intermediate" was defined as "any chemical substance which is (1) used as a reactant in the intentional manufacture of another chemical substance, and (2) is consumed in whole or in part in that reaction"; and a "site-limited intermediate" was defined as an "isolated intermediate which is manufactured, processed, and used only at the site of manufacture and not intentionally distributed outside that site except as waste which will be delivered for disposal in accordance with applicable government laws and regulations, or for burning as a fuel".

As with the low volume and LoREX exemption categories, the Agency would conduct a risk assessment of the SLI based upon the information submitted by the manufacturer, and would approve the exemption only upon a finding that the substance would not present an unreasonable risk to human health or the environment. Certain hazard or exposure concerns identified during the 30-day review period would be grounds for a denial of the exemption notice. For example, significant human exposures or releases that could not be adequately mitigated through controls or waste treatment would prevent the Agency from making the requisite "will not present an unreasonable risk" finding.

The Agency believes, as it did in 1982, that site-limited intermediates as a class may be considered low risk because they are largely consumed in chemical reactions and thus do not generally leave the site of manufacture, either in emissions, waste or final products, except in relatively small amounts. Moreover, to the extent that workers may be exposed to SLIs at manufacturing sites prior to initiation of the chemical reaction, such exposures can typically be adequately controlled through employment of protective equipment, engineering controls, and/or workplace practices. However, as stated above, the Agency is not convinced at this time of the need for both an SLI exemption category and a LoREX exemption category. Therefore, The Agency will consider promulgating a separate exemption category for SLIs in the final rule only if either (1) the LoREX category is substantially altered in the final rule, or (2) public comment convinces EPA that there could be a significant number of low risk SLIs which would not satisfy the LoREX eligibility criteria.

V. Alternatives and Request for Public Comment

EPA requests comments and data on all aspects of this proposal, including provisions of § 732.50 that EPA has proposed to retain unchanged from the 1985 exemption. EPA will consider all comments and data received during the comment period and may amend any provision of § 723.50 where appropriate, based on these comments.

VI. Regulatory Analysis

A. Summary of Risk Assessment

1. *10,000 kilogram/year chemical substances.* To assess the risk associated with raising the ceiling for chemical substances eligible for the low volume exemption from 1,000 kilograms/year to 10,000 kilograms/year, the Agency relied primarily upon the risk assessment developed to support the 1985 final low volume rule, along with the earlier version used to support the 1982 proposed low volume and site-limited intermediate rules.

a. *Exposure assessment.* The exposure assessment illustrates that, while low production volume in itself limits potential for exposure and environmental release, manufacture, processing, and use of such chemicals can in some circumstances result in significant exposures at both the 1,000 and 10,000 kilogram annual production levels.

i. *Occupational exposure.* Based on PMN data, the number of workers exposed during manufacturing ranged from an average of about four for chemical substances manufactured in quantities of 1,000 kilograms or less per year to an average of about eight for chemical substances manufactured in quantities of 10,000 kilograms or less per year. Duration of exposure associated with manufacture averaged about 5 hours per day at both production levels, and the average number of days of production per year was 62.

Only a limited number of PMNs included estimates of workplace concentration. The average concentrations associated with manufacture were most often in the ranges of 0 to 1 and 1 to 10 mg/m^3 for airborne solids and in the 1 to 10 ppm range for vapors. EPA's evaluation of OSHA data (USEPA, OTS "Site-Limited Intermediate Exemption: Occupational Exposure and Environmental Release Assessment." March 19, 1982) indicated a time weighted average (TWA) of 6 ppm, with a maximum value of 72 ppm for vapors. EPA believes that data obtained from OSHA monitoring activities provide more reliable estimates of workplace concentrations.

EPA's analysis of processing and use of low volume chemicals indicated that the wide variety of possible processing and use operations can result in a wider range and higher level of exposures than typically associated with manufacturing operations. The average number of workers exposed during processing and use operations exceeded the average numbers typically exposed during manufacturing. The number ranged from an average of 12 workers for a chemical processed in quantities of 1,000 kilograms or less per year to an average of 141 workers for chemicals processed or used in quantities of 10,000 kilograms or less per year.

ii. *Consumer exposure.* Consumer exposures were assessed for five use scenarios: photographic chemicals used in home darkrooms; spray adhesives; paints; dyes; and fragrances used in soaps and detergents. The use scenarios, which reflected actual uses reported in PMNs, were selected to represent divergent and potentially significant exposure situations. In these scenarios, the individual lifetime average daily exposures were estimated to range from 0.0016 mg/kg/day for a fragrance in soap to negligible levels for dyed fabrics.

According to EPA's analysis, many of the consumer use scenarios could result in relatively large numbers of

consumers exposed. The numbers of consumers potentially exposed at the 10,000 kilogram production level ranged from 76,000,000 for a fragrance in shampoo to 98,000 for a spray adhesive. Because the concentration of a new chemical substance in a final product remains constant, the production volume is likely to affect only the number of consumers exposed, not the exposure level to each individual. Therefore, the number of consumers exposed at the 10,000 kilogram production limit is about 10 times the number that would be exposed at the 1,000 kilogram limit.

b. *Environmental release.* Environmental release from manufacturing and the resultant environmental concentrations were estimated for low volume chemicals. EPA relied on PMN data in estimating the duration and frequency of releases. However, PMN projections of the amount released were considered less reliable than other sources of information.

The exposure analysis indicated that the average quantity released to water is 0.08 percent of the production volume, with an upper bound of 0.4 percent. Amounts released to air average 0.03 percent of production volume, with a 0.2 percent upper bound. However, some processing and industrial uses result in more substantial release rates, with a range from 0.3 to 25 percent of the production volume released to water. Discharges of a new low volume chemical from a single site processing 10,000 kilograms of the chemical were estimated to produce environmental concentrations ranging from less than 0.0005 to 5.2 ppm in a receiving stream whose stream dilution factor was equal the national median for streams receiving effluent from industrial facilities.

In some cases, such as detergent additives, environmental release from consumer uses equaled the total production volume; however, the actual magnitude of environmental exposure was determined to be insignificant due to the low production volume, the wide distribution of release, and the small amount of new chemical typically contained in each consumer product.

c. *Risk under exemption conditions.* There are several elements of the proposed exemption amendment that would significantly reduce risks to human health and the environment.

Chemical substances with carcinogenic, teratogenic, neurotoxic, and other chronic effects appear to present the greatest risks even at relatively low exposures. The proposed provisions which permit the Agency to deny exemptions for substances which may present unreasonable risks for those effects should significantly reduce the likelihood that chemicals that present such risks would be manufactured under the amended exemption. If the exemptions for such chemicals are denied, or if their submitters are required to resubmit their exemption notices to provide for more stringent release and exposure controls, the range of potential risks would be substantially below the high end of EPA's estimates.

In addition, under the proposed amendments, EPA would continue to review all exemption notices during the 30-day review period. This review will help ensure that manufacturers choose appropriate safeguards to control risks, as well as provide a screen to identify chemicals that do not qualify for the exemption.

2. *Low release and exposure chemical substances.* The risk associated with a given substance is a function of both the inherent toxicity of the substance and the exposure of the relevant organism to the substance. Therefore, to the extent that releases and exposures are maintained below certain critical levels, potential risks presented by the substance are minimal. In order to assess the potential risk associated with the proposed LoREX exemption, the Agency evaluated the proposed exposure and release criteria in the context of its experience conducting risk assessments on over 18,000 new chemical substances in the PMN program over the last 12 years. Based on this experience, EPA tailored its LoREX exemption criteria in a manner to exclude from eligibility the large majority of chemical substances which may present significant human or environmental risks under conditions of manufacturing, processing, and use. For those substances which meet the eligibility criteria but may nevertheless present significant risks due to unusually high predicted toxicity levels, the Agency will either deny the exemptions or condition approval upon satisfaction of stricter exposure and release requirements.

a. *Human exposure.* Due to the wide range of potential consumer and general population exposures which are possible from the universe of new chemical products, the Agency concluded that it could not develop any meaningful consumer or general population exposure criteria which would consistently screen out those substances which would present significant risks from direct dermal or inhalation exposures. Consequently, EPA has proposed to exclude from LoREX exemption eligibility all new chemical substances which entail any direct consumer or general population exposure (except for negligible drinking water and ambient air exposures discussed in Unit A.2.b. of this preamble) New chemical substances intended for use in paints, soaps, dyes, and other consumer products, therefore, would have to be reviewed by the Agency in a full PMN notice or under one of the other applicable PMN exemptions.

Under the proposed LoREX criteria applicable to workers, only those chemical substances with no dermal exposures and no unprotected inhalation exposures to workers will be eligible to apply for the exemption. Therefore, to the extent that pollution prevention practices, the required methods of control, engineering controls, protective equipment, work practices, etc., will maintain inhalation and dermal exposure below critical levels, potential risks presented by the exempted chemical substances will be minimal.

b. *Environmental release.* In terms of environmental releases, LoREX eligibility criteria for releases to three environmental media are proposed. For ambient surface water, the Agency is proposing that submitters either (i) prevent all direct and indirect releases of the exempted substance to surface waters; or (ii) demonstrate that any releases to water that may occur will result in surface water concentrations of the substance that are no greater than 1 part per billion (ppb) using the surface water concentration calculation method described in 40 CFR 721.90. Based on Agency worst case assumptions for drinking water exposure estimates, surface water concentrations of 1 ppb will result in human drinking water exposures at or below the 1 mg/year LoREX drinking water criterion in nearly every case; therefore, compliance with the drinking water exposure criterion will be presumed from compliance with the 1 ppb surface water level. The Agency will reserve the right, however, to require lower surface water concentrations on a case-by-case basis when concerns for carcinogenicity, neurotoxicity, or other effects are raised, or under conditions where actual drinking water exposures are likely to significantly exceed the 1 mg/yr dosage.

The LoREX eligibility criterion for maximum annual average ambient air release concentration from incineration is 1 $\mu g/m^3$. This level was derived from air exposure modeling estimates of maximum ground level concentrations from incinerator stacks, using worst case meteorological data sets. To determine

whether a particular substance meets the criteria, submitters would calculate exposure levels using the method described in Table 1. As with drinking water exposures, the Agency may require lower air release levels in individual cases if concerns for chronic health effects are raised for the exempted substance.

For land/groundwater disposal, EPA is proposing that a LoREX substance not be disposed of by landfill or other land disposal methods unless the submitter demonstrates that the substance will not migrate to groundwater. To make such a demonstration, a submitter would be required to provide data on the biodegradation and leaching potential of the exempted substance, or other data that clearly establish that releases to groundwater will not occur. EPA suggests the following core set of tests to establish groundwater migration potential: (1) An inherent biodegradability in soil test (40 CFR 796.3400); (2) an anaerobic biodegradability of organic chemicals test (40 CFR 796.3140); and (3) depending on the substance's chemical properties, either a sediment and soil adsorption isotherm test (40 CFR 796.2750) or a soil adsorption isotherm test (40 CFR 796.2700). EPA strongly suggests that submitters contact the EPA Prenotice Coordinator (telephone: (202) 260–1745) for guidance prior to commencement of the above testing.

Upon approval of a LoREX exemption, the submitter would be bound to the continuous use of the exposure and release controls described in the approved exemption notice, as well as the listed uses and manufacturing sites. The Agency would deny an exemption notice notwithstanding satisfaction of the exposure-based exemption criteria if it believes it cannot support the affirmative finding required under section 5(h)(4) of TSCA that the manufacture, processing, distribution, use, and disposal of the chemical substance, under the conditions described in the notice, will not present an unreasonable risk to human health or the environment.

VII. Economic Impact

The regulatory impact analysis estimates the costs and benefits attributable to the proposed regulation. In this case, the analysis also contains estimates for the three additional proposed amendments to Section 5 regulations, namely the Polymer Amendment, the Procedural Amendment, and the Non-5(e) Significant New Use Rule Amendment. Because these proposed regulations are amendments to current regulations, the costs and benefits are incremental, estimating the effect of the proposal with respect to the current regulation.

The costs and benefits associated with this proposed amendment are partially quantified; many of the benefits are unquantified but are expected to be of significant importance. Considering only the quantified costs and benefits, there is a cost savings in most instances. Assuming either 1,000, 2,000, or 3,000 annual Section 5 submissions, the savings as compared to the current regulation are estimated to be:

Annual Number of Submissions	Annual Cost Savings ($ Million)	
	Industry	Government
1,000	(0.2)–0.4	1.3–1.5
2,000	(0.4)–0.7	2.5–3.1
3,000	(0.5)–1.0	3.8–4.8

This proposed amendment affects the low volume exemption and establishes a low release/low exposure exemption (LoREX). Industry costs associated with the proposed amendment to the low volume exemption are reporting costs, delay costs, and a user fee. Per submission reporting costs are increased due to the more comprehensive submission requirements. Delay costs for those substances which qualify for the current exemption are slightly higher, while delay costs are significantly reduced for those substances which currently must submit a full PMN submission but would qualify for the proposed exemption. Delay costs are the costs associated with the delayed introduction of the substance into the market due to Section 5 regulations. In addition, a user fee has been added to the amendment.

Industry costs associated with the proposed LoREX exemption are also reporting costs, delay costs, and a user fee. Because this would be a new exemption, all of the submitters would have originally been required to submit a full PMN submission and would already be required to pay a user fee. Also, the reporting requirements are only slightly more than current requirements.

Unquantified benefits associated with this proposed amendment include increased voluntary use of pollution prevention practices by submitters and a greater emphasis on the use of low risk chemicals.

The Agency's complete economic analysis is available in the public record for this rule (OPTS–50596).

VIII. Finding of No Unreasonable Risk

1. *Statutory background.* Under section 5(h)(4) of TSCA, EPA is authorized to exempt the manufacturer of any new chemical substance from all or part of the requirements of section 5 if EPA determines that the manufacture, processing, distribution in commerce, use, and disposal of the substance will not present an unreasonable risk of injury to human health or the environment. Section 26(c) of TSCA provides that any action authorized under TSCA for an individual chemical substance may be taken for a category of such substances. Under this proposal, EPA will be exempting chemical substances with production volumes less than or equal to 10,000 kilograms/year and chemical substances with low human exposure and low release to the environment. For each of these categories, as discussed below, EPA has made a finding that, as a general matter, chemical substances eligible for the exemptions will not present an unreasonable risk of injury when manufactured, processed, used, distributed in commerce, or disposed of under the terms of the proposed exemptions.

The term "unreasonable risk" is not defined in TSCA. The legislative history, however, indicates that unreasonable risk involves the balancing of the probability that harm will occur and the magnitude and severity of that harm against the effect of the proposed regulatory action on the availability to society of the benefits of the chemical substance.

2. *Risks.* In making the "no unreasonable risk" finding under TSCA section 5(h)(4), EPA first considered the risk posed by granting each of the exemptions. Risk is the combination of the hazard presented by a chemical substance and the exposure of humans or the environment to the substances. EPA's determination of the reasonableness of risk involves a consideration of factors such as environmental effects, distribution, and fate of the chemical substance in the environment, disposal methods, waste water treatment, use of protective equipment and engineering controls, use patterns, and market potential of the chemical substance. These variables are difficult to quantify and standardize, thereby requiring EPA to supplement available data with its professional judgment.

EPA's preliminary determination of no unreasonable risk is based on consideration of (i) the limitations on risk that would result from the safeguards built into the rule, including

Agency review; (ii) the limitations on risk resulting from the restriction of exemptions to chemical substances manufactured at volumes of 10,000 kg/yr or less and to low exposure/low release chemical substances; (iii) the benefits to industry and the public provided by chemical substances manufactured under the exemption; and (iv) the benefits to the public and the Agency from the Agency's enhanced ability to utilize its limited resources on reviewing chemical substances and uses of high risk and concern. EPA recognizes that, even with the safeguards imposed by this rule, the proposed approach would not ensure that there would be no risk from chemicals manufactured under the exemption. The statute does not define no unreasonable risk to be zero risk. Rather, it defines no unreasonable risk as a balancing of risk and benefit. Because of the safeguards in the proposed rule, the requirement that the provisions of the approved exemption are binding on the submitter, and the restricted nature of the exemption categories, EPA believes that risks are not likely to be any greater than if the full PMN process were completed. Furthermore, the new chemical substances provide benefits to industry and to the public. These benefits are an important element in the finding of no unreasonable risk.

The proposed conditions of these exemptions are designed to mitigate risk, largely by the use of: (i) the reviews conducted by the Agency to assess whether the new chemical substances may cause chronic or acute human health or environmental effects; and (ii) the binding nature of the provisions of exemption notices, including the controls placed on exposure through worker protection requirements. For the LVE, EPA determined that risks would generally be low because low production volume chemicals typically are not expected to result in high exposure to humans or the environment. Similarly, the eligibility criteria for the LoREX exemption directly limit permissible releases of and exposures to the exempted substance. In addition to the general finding of low release/exposure, and therefore low risk for these categories, the restrictions and safeguards built into the proposed exemptions will ensure that the risks presented by the exempt substances are low. For example, worker protection requirements and release restrictions imposed through the terms of the exemptions will minimize exposure, and therefore, risk.

a. *EPA review.* Within the 30-day review period, EPA is confident that it can identify chemical substances posing potential risks requiring more detailed and comprehensive review. EPA's abbreviated review plays an important role in the exemptions and in the finding of no unreasonable risk. EPA is proposing to lengthen the review period from 21 to 30 days to ensure that staff resources will be sufficient to review the increased number of exemption notices expected under the amended rule and the increased amount of information required of each notice. Information submitted will include production volume, hazard information, descriptions of the manufacturing, processing, and uses, releases to the environment, and certain physical/chemical data which EPA will assess in making a determination of risk. During this period, the Agency will have sufficient time to identify any problems that were likely to have been identified in a full PMN review. If EPA determines that a new chemical substance is not eligible for an exemption, manufacture could not begin. The manufacturer would then be required to comply with TSCA section 5(a)(1) before the substance could be manufactured for commercial purposes by submitting a full PMN to the Agency.

b. *New information and EPA revocation.* In addition to these safeguards, the proposed rule contains several other provisions that will further limit the possibility that exempted substances will present significant risks. Most important, the proposed rule establishes procedures for revocation of the exemption if EPA later determines that the substance may present an unreasonable risk. In addition, EPA would have the authority to require documents relevant to an exemption from the manufacturer (in addition to the information provided in the exemption notice), and the manufacturer would be required to submit promptly to EPA any new data indicating that a substance is ineligible. These provisions will ensure that eligibility for and continuation of the exemption will be determined on the basis of the best available information, regardless of when the information becomes available.

3. *Benefits.* EPA believes that these proposed exemptions will allow many manufacturers to introduce new chemical substances in commerce much more rapidly than via the PMN process. The time and resource savings will also benefit EPA which will, by utilizing its limited assets more efficiently, be able to apply more staff time to reviewing higher risk chemical substances and uses.

4. *Pollution prevention considerations.* The proposed LoREX exemption is expected to further the Agency's pollution prevention efforts by encouraging development of manufacturing processes and technologies which reduce chemical releases and exposures at their source. Such reductions not only limit potential risks to people and the environment, but also many times produce significant long-term cost savings to industry through the recapture and reuse of substances which would otherwise have been released into workplaces or the environment.

5. *Risk/benefit balance.* As discussed above, EPA has determined that the risk presented by exempting these chemical substances is low. At the same time, there are significant benefits to be achieved by the exemptions, which encourage innovation and permit manufacturers to introduce new chemicals into commerce more rapidly. Thus, EPA has determined that, as a general matter, the risks associated with low volume substances and low release/low exposure substances are outweighed by the benefits to society of exempting these substances from full PMN review.

6. *Exclusion.* Despite the low risk generally associated with low volume and low release/low exposure substances, EPA recognizes that for some substances that may meet the general requirement for these exemptions, it may not be possible to make a finding of no unreasonable risk. For example, a highly toxic chemical may present an unreasonable risk even if exposure to the chemical is low Likewise, a low production volume chemical may present an unreasonable risk if it is hazardous and is manufactured or processed in a manner that would result in high human exposure or high release to the environment. Thus, although EPA is making a general "no unreasonable risk" finding for categories of chemical substances, EPA will continue to evaluate exemption notices on a case-by-case basis to determine if individual substances should be excluded from the general exemption categories based on the potential risks presented by those substances. For a further discussion of how EPA will determine when to exclude an individual substance from the general exemptions see Unit III. of this proposal.

IX. Rulemaking Record

Interested persons may submit written comments regarding this proposal to the TSCA Document Control Officer (TS-790), Office of Prevention, Pesticides,

and Toxics, 401 M St., SW., Washington, DC 20460. Commenters representing corporations or trade associations must submit three copies of all comments; individuals may submit single copies of comments. The comments must be identified with the document control number "[OPTS-50596]".

EPA has established a record for this rulemaking (docket control number OPTS-50596). The record includes basic information considered by the Agency in developing this proposed rule. A public version of the record without any confidential information is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

X. Other Regulatory Requirements

A. Executive Order 12991

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices.

This proposed regulation was submitted to the Office of management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the notice submitters were small firms, since the rule would generally reduce the burden and cost of full PMN requirements for such businesses.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et. seq. and have been assigned OMB control number 2070-0012.

The public reporting burden for this collection of information is estimated to vary from 96 to 116 hours per response, with an average of 106 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 700 and 723

Chemicals, Environmental protection, Premanufacture notification, Hazardous materials, Reporting and recordkeeping requirements.

Dated: January 19, 1993.

William K. Reilly,
Administrator.

Therefore, 40 CFR chapter I, is proposed to be amended as follows:

PART 700 — [AMENDED]

1. In part 700:

a. The authority citation for part 700 continues to read as follows:

Authority: 15 U.S.C. 2625.

a. In § 700.43 by revising the definition of "Exemption notice" to read as follows:

§ 700.43 Definitions.

* * * * *

Exemption notice means any notice submitted to EPA under § § 723.50 or 723.175 of this chapter.

* * * * *

b. In § 700.45 by revising paragraph (c) and the parenthetical text at the end of § 700.45 to read as follows:

§ 700.45 Fee payments.

* * * * *

(c) Persons are exempt from remitting any fee for submissions under § 720.38 of this chapter.

* * * * *

(Approved by the Office of Management and Budget under control number 2070-0012).

PART 723 — [AMENDED]

2. In part 723:

a. The authority citation for part 723 would continue to read as follows:

Authority: 15 U.S.C. 2604.

b. By revising § 723.50 to read as follows:

§ 723.50 Chemical substances manufactured in quantities of 10,000 kilograms or less per year, and certain chemical substances with low environmental releases and human exposures.

(a) *Purpose and scope.* (1) This section grants an exemption from the premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture of (i) certain chemical substances manufactured in quantities of 10,000 kilograms or less per year, and (ii) certain chemical substances with low environmental releases and human exposures.

(2) To manufacture a new chemical substance under the terms of this exemption a manufacturer must:

(i) Submit a notice of intent to manufacture 30 days before manufacture begins, as required under paragraph (e) of this section.

(ii) Comply with all other provisions of this section.

(b) *Definitions.* The following definitions apply to this subpart.

Act means the Toxic Substances Control Act (15 U.S.C. 2601 et seq).

Category of chemical substances has the same meaning as in section 26(c)(2) of the Act (15 U.S.C. 2625(c)(2)).

Environment has the same meaning as in section 3 of the Act (15 U.S.C. 2602).

Environmental transformation product means any chemical substance resulting from the action of environmental processes on a parent compound that changes the molecular identity of the parent compound.

Metabolite means a chemical entity produced by one or more enzymatic or nonenzymatic reactions as a result of exposure of an organism to a chemical substance.

Serious acute effects means human disease processes or other adverse effects that have short latency periods for development, result from short-term exposure, or are a combination of these factors and that are likely to result in death, severe or prolonged incapacitation, disfigurement, or severe or prolonged loss of the ability to use a normal bodily or intellectual function with a consequent impairment of normal activities.

Serious chronic effects means human disease processes or other adverse effects that have long latency periods for development, result from long-term exposure, are long-term illnesses, or are a combination of these factors and that are likely to result in death, severe or

prolonged incapacitation, disfigurement, or severe or prolonged loss of the ability to use a normal bodily or intellectual function with a consequent impairment of normal activities.

Significant environmental effects means:

(1) Any irreversible damage to biological, commercial, or agricultural resources of importance to society;

(2) Any reversible damage to biological, commercial, or agricultural resources of importance to society if the damage persists beyond a single generation of the damaged resource or beyond a single year; or

(3) Any known or reasonably anticipated loss of members of an endangered or threatened species. Endangered or threatened species are those species identified as such by the Secretary of the Interior in accordance with the Endangered Species Act, as amended (16 U.S.C. 1531).

The terms *byproduct, EPA, importer, impurity, known to or reasonably ascertainable, manufacture, new chemical substance, person, and test data* have the same meanings as in § 720.3 of this chapter.

(c) *Exemption categories.* This exemption applies to (1) manufacturers of each new chemical substance manufactured in quantities of 10,000 kilograms or less per year under the terms of this exemption, and (2) any manufacturer of a new chemical substance satisfying all of the low environmental releases and human exposure eligibility criterion in the following Table 1:

TABLE 1.—PROPOSED LOW RELEASE/EXPOSURE (LOREX) ELIGIBILITY CRITERIA[1]

Type of Exposure or Release	Eligibility Criteria for Exemption
Human Exposure	
General Population Exposure.	
Dermal:	None
Inhalation:	None[2]
Drinking Water:	<1 mg/yr[3]
Consumer Exposure.	
Dermal:	None
Inhalation:	None
Worker Exposure.	
Dermal:	None
Inhalation:	None, unless adequate protection provided
Environmental Release	
Ambient Surface Water Releases.	No releases resulting in surface water concentrations above 1 ppb[4]
Ambient Air Releases	No incineration releases above 1 μg/m³ maximum annual average concentration[5]
Land/Groundwater Releases.	No releases to landfill unless submitter demonstrates that the exempted substance has negligible ground-water migration potential

[1] This table lists the minimum criteria required to apply for the exemption. Based on the review of the notice, lower concentrations may be required by the Agency for substances with potential for carcinogenic, neurotoxic, or other effects.
[2] No inhalation exposure permitted except as provided under the ambient air incineration criteria.
[3] Estimated average dosage resulting from drinking water exposures in streams with maximum allowable concentration permitted under ambient surface water criteria (1 ppm).
[4] Concentration to be calculated using methods prescribed in 40 CFR 721.90.
[5] Using following formula: (kg/day release after treatment) X (release days/year) X 9.68 X 10⁶ μg/m³.

Manufacturers of chemical substances that qualify for an exemption under both paragraph (c)(1) and (c)(2) of this section may apply for either exemption, but not both.

(d) *Chemical substances that cannot be manufactured under this exemption.* A new chemical substance cannot be manufactured under this section, notwithstanding satisfaction of the criterion of paragraphs (c)(1) or (c)(2) of this section, if EPA determines, in accordance with paragraph (g) of this section, that the substance, any reasonably anticipated metabolites, environmental transformation products, or byproducts of the substance, or any reasonably anticipated impurities in the substance may cause, under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal of the new chemical substance—

(1) Serious acute (lethal or sublethal) effects.

(2) Serious chronic (including carcinogenic and teratogenic) effects.

(3) Significant environmental effects.

(e) *Exemption notice.* (1) The manufacturer must submit an exemption notice to the EPA at least 30 days before manufacture of the new chemical substance begins. The notice must be sent in writing to: TSCA Document Control Officer (TS-790), Rm. L-100, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The date of submission will be the date on which the notice is received by the TSCA Document Control Officer. EPA will acknowledge the receipt of the notice by letter. The letter will identify the date on which the review period begins. The notice shall be submitted using EPA Form No. 7710-25 ("the PMN form"), which may be obtained from EPA by calling or writing the Environmental Assistance Division, TS-799, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460. The notice shall contain all of the information on chemical identity, impurities, trade names, production volume, uses, manufacturing sites, environmental release, and worker exposure required under § § 720.45 and 720.50 of this chapter. The following additional information shall also be included:

(i) *Type and category of notice.* The manufacturer must clearly indicate on the first page of the PMN form that the submission is a TSCA section 5(h)(4) exemption notice, and must indicate whether the notice is being submitted under paragraph (c)(1) or (c)(2) of this section.

(ii) *Production volume.* (A) Manufacturers submitting an exemption under paragraph (c)(1) of this section will be assumed, for purposes of conducting the EPA's risk assessment, to be manufacturing at an annual production volume of 10,000 kilograms. Manufacturers who intend to manufacture an exempted substance at annual volumes of less than 10,000 kilograms and wish EPA to conduct its risk assessment based upon such lesser annual production level rather than a 10,000-kilograms level, may so designate; however, manufacturers who opt to designate annual production levels below 10,000 kilograms shall not manufacture more than the designated amount of the exempted substance unless a new exemption notice for a higher (up to 10,000 kgs) manufacturing volume is submitted to, and approved by, EPA.

(B) Manufacturers submitting an exemption under paragraph (c)(2) of this section shall list the estimated maximum amount to be manufactured during the first year of production and the estimated maximum amount to be manufactured during any 12-month period during the first 3 years of production.

(iii) *Exposure and release information.* The manufacturer must include a description of each type of manufacturing, processing, and use operation involving the new chemical substance, including identification of the manufacturing site and the estimated number of processing or use sites, situations in which worker exposure to and/or environmental release of the new chemical substance may occur, the number of workers exposed and the magnitude, duration, and frequency of exposure and

environmental release, and the controls, work practices, or equipment which limit worker exposure and environmental release. Where a manufacturer provides worker exposure or environmental release control descriptions to support the exemption notice, the manufacturer must maintain those controls throughout the period of the exemption. Where the physical form of the new chemical substance contributes to the control of human exposures, (e.g., a non-volatile liquid form rather than a powder form), the manufacturer must continue manufacturing, processing, and/or using the new chemical substance in the physical form described. Where another manufacturer holds an exemption for the new chemical substance under this section, the manufacturer submitting a notice for the additional exemption under this section must also demonstrate that the additional human exposure to, and/or environmental release of, the new chemical substance resulting from its manufactured volumes will not present an unreasonable risk of injury to human health or the environment.

(iv) *Certification.* In addition to the certifications required in the PMN form, the following certifications shall be included in submissions under this section. The manufacturer must certify that:

(A) The manufacturer intends to manufacture or import the new chemical substance for commercial purposes, other than in small quantities solely for research and development, under the terms of this section.

(B) The manufacturer is familiar with the terms of this section and will comply with those terms, including the requirements to employ the controls, work practices, or equipment to control exposure to and release of the exempted substance which is described in the exemption notice.

(C) The new chemical substance for which the notice is submitted meets all applicable exemption conditions.

(D) For substances manufactured under paragraph (c)(1) of this section, the manufacturer:

(*1*) Intends to commence manufacture of the exempted substance for commercial purposes within 1 year of the date of the expiration of the 30–day review period, and will withdraw the exemption in the event that such manufacture is not commenced within that time.

(*2*) Will comply with any applicable production volume limitations in accordance with paragraph (e)(1)(ii) of this section.

(2) *Sanitized copy of notice.* (i) The manufacturer must make all claims of confidentiality in accordance with paragraph (k) of this section. If any information is claimed confidential, the manufacturer must submit a second copy of the notice, with all information claimed as confidential deleted, in accordance with paragraph (k)(3) of this section.

(ii) If the manufacturer does not provide the second copy, the submission will be considered incomplete.

(3) *Incomplete notices.* If EPA receives a submission which does not include all of the information required under paragraph (e) of this section, the submission will be determined to be incomplete by EPA. To reinitiate an exemption notice which has been declared incomplete, a manufacturer must submit a completely new exemption notice form containing all the required information; partial submissions sent to EPA to supplement notices declared incomplete will not be accepted. Photocopied pages from previously submitted exemption forms will be accepted provided that the certifications page contains an original dated signature.

(f) *Review period.* EPA will review the notice submitted under paragraph (e) of this section to determine whether the new chemical substance is eligible for the exemption. The review period will end 30 days after receipt of the notice by the TSCA Document Control Officer. Upon expiration of the 30–day review period, if EPA has taken no action, the manufacturer may consider its exemption approved and begin to manufacture the new chemical substance under the terms described in its notice and in this section.

(g) *Notice of ineligibility*—(1) *During the review period.* If the EPA determines during the review period that the new chemical substance does not meet the terms of this section, that the new chemical substance meets one or more of the exclusions set forth in paragraph (d) of this section, or that there are issues concerning toxicity or exposure that require further review which cannot be accomplished within the 30–day review period, EPA will notify the manufacturer by telephone that the substance is not eligible. This telephone notification will subsequently be confirmed by certified letter that identifies the reason(s) for the ineligibility determination. The manufacturer may not begin manufacture of the new chemical substance without complying with section 5(a)(1) of the Act.

(2) *After the review period.* (i) If at any time after the review period specified in paragraph (f) of this section, EPA obtains information through a TSCA section 8(e) report or through any other source indicating that the new chemical substance does not meet the terms of this section, or that any of the exclusions set forth in paragraph (d) of this section may be applicable, EPA shall notify the manufacturer of that substance, by certified mail, that its exemption under this section will be revoked.

(ii) The manufacturer may continue to manufacture, process, distribute in commerce, and use the substance after receiving the notice under paragraph (g)(2)(i) of this section if the manufacturer was manufacturing, processing, distributing in commerce, or using the substance at the time the notification was received if the manufacturer submits written objections to EPA within 15 days of receipt of the notification. Such written objections must state the reasons why the manufacturer believes that the substance will not present an unreasonable risk of injury to health or the environment. Manufacturers not manufacturing, processing, distributing in commerce, or using the substance at the time of the notification may not begin manufacture until EPA makes its final determination under paragraph (g)(2)(iii) of this section.

(iii) EPA will consider any objections submitted under paragraph (g)(2)(ii) of this section and will make a final determination on whether to revoke the exemption. EPA will notify the manufacturer of the final determination by certified mail within 15 days of receipt of the objections submitted under paragraph (g)(2)(ii) of this section.

(iv) Within 24 hours of receipt of a final determination from EPA that an exemption is revoked, the manufacturer of the substance for which the exemption was revoked shall cease all manufacturing, processing, distribution in commerce, and use of that substance. The manufacturer may not resume manufacture, processing, distribution in commerce, or use until it submits a premanufacture notice under section 5(a)(1) of the Act and part 720 of this chapter and the notice review period has ended.

(v) Action under this paragraph does not preclude action under sections 7, 15, 16, and 17 of the Act.

(h) *Additional information.* If the manufacturer of a new chemical substance under the terms of this exemption obtains test data or other information indicating that the new chemical substance may not qualify for

the exemption, the manufacturer must submit these data or information to EPA within 15 working days of receipt of the information. If, during the notice review period, the submitter obtains possession, control, or knowledge of new information that materially adds to, changes, or otherwise makes significantly more complete the information included in the notice, the submitter must send that information to the address listed on the notice form within 10 days of receiving the new information, but no later than 5 days before the end of the notice review period. The new submission must clearly identify the submitter and the exemption notice to which the new information is related. If the new information becomes available during the last 5 days of the notice review period, the submitter must immediately inform its EPA contact for that notice by telephone.

(i) *Changes in manufacturing site, use, human exposure and environmental release controls, and certain manufacturing volumes.* (1) Chemical substances manufactured under this section must be manufactured at the site or sites described, under the human exposure and environmental release controls described, and for the uses described in the approved exemption. Chemical substances manufactured under paragraph (c)(1) of this section and in specific annual production volumes designated pursuant to paragraph (e)(1)(ii) of this section must not exceed the 10,000 kilograms per year volume, or the designated volume, whichever is applicable.

(2) Any person who manufactures a new chemical substance under paragraph (c)(1) or (c)(2) of this section must comply with the provisions of this section, including submission of a new notice under paragraph (e) of this section, before:

(i) Manufacturing the new chemical substance at a site that was not approved in a previous exemption notice.

(ii) Manufacturing the new chemical substance for a use that was not approved in a previous exemption notice.

(iii) Manufacturing the new chemical substance without employing the human exposure and environmental release controls approved in a previous exemption notice.

(iv) Manufacturing the chemical substance in annual production volumes above any volume specified under paragraph (e)(1)(ii) of this section.

(3) In an exemption notice informing EPA of a change in site, worker protection or environmental release controls, or use, the manufacturer is not required to provide the same information submitted to EPA in a previous exemption notice on that chemical substance. The new exemption notice, however, must indicate the identity of the new chemical substance; the manufacturer's name; the name and telephone number of a technical contact; and location of the new site, worker protection or environmental release controls, or use information. The notice must also include the EPA-designated exemption number of the previous submission and a new certification by the manufacturer, as described in paragraph (e)(1)(iv) of this section.

(j) *Customer notification.* (1) Manufacturers of new chemical substances described in paragraphs (c)(1) and (c)(2) of this section must notify processors and industrial users that the substance can be used only for the uses specified in the exemption notice. The manufacturer must also inform processors and industrial users of any controls specified in the exemption notice. The manufacturer may notify processors and industrial users by means of a container labeling system, written notification, or any other method that adequately informs them of use restrictions or controls.

(2) A manufacturer of a new chemical substance described in paragraph (c)(2) of this section may distribute the chemical substance only to other persons who agree in writing to not further distribute the substance until it has been reacted or otherwise rendered into a physical form or state in which releases and exposures above the paragraph (c)(2) eligibility criteria will not occur.

(3) If the manufacturer learns that a direct or indirect customer is processing or using the exempt substance in violation of use restrictions or without imposing prescribed worker protection or environmental release controls, the manufacturer must cease distribution of the substance to the customer or the customer's supplier immediately. The manufacturer must also report this action to EPA within 15 days under paragraph (h) of this section. Within 30 days of its receipt of the report, EPA will notify the manufacturer whether, and under what conditions, distribution of the chemical substance to the customer may resume.

(k) *Confidentiality.* (1) If the manufacturer submits information to EPA under this section which the manufacturer claims to be confidential business information, the manufacturer must clearly identify the information at the time of submission to EPA by bracketing, circling, or underlining it and stamping it with "CONFIDENTIAL" or some other appropriate designation. Any information so identified will be treated in accordance with the procedures in 40 CFR part 2. Any information not claimed confidential at the time of submission may be made available to the public without further notice.

(2)(i) Any person who asserts a claim of confidentiality for chemical identity under this paragraph must provide a generic chemical name that is only as generic as necessary to protect the confidential chemical identity of the particular chemical substance. The name should reveal the specific chemical identity to the maximum extent possible.

(ii) The generic name provided by the submitter will be subject to EPA review and approval in accordance with the procedures specified in § 720.85(b)(6) of this chapter. The generic name provided by the submitter or an alternative selected by EPA under these procedures will be placed on a public list of substances exempt under this section.

(3) If any information is claimed confidential, the manufacturer must submit a second copy of the notice with all information claimed as confidential deleted. EPA will place the second copy in the public file.

(l) *Determination of first manufacturer of a new chemical substance.* (1) A person who intends to manufacture a new chemical substance under paragraph (c)(1) of this section may determine whether that particular substance is already being manufactured under that section and, therefore, subject to the requirements of paragraph (e)(1)(iii) of this section, by submitting a notice on the substance under paragraph (e) of this section. EPA will inform the manufacturer within the 30-day review period whether another person is already manufacturing the substance under the exemption.

(2) Alternatively, the manufacturer may ask EPA whether another manufacturer is already producing the new chemical substance under this section. EPA will respond to this inquiry only if EPA determines that the manufacturer making the inquiry has shown a bona fide intent to manufacture in accordance with the procedures set out in 40 CFR 720.25(b)(2) through (b)(9).

(3) If EPA determines that the manufacturer has not shown a bona fide intent to manufacture the new substance under the terms of this section, EPA will promptly notify the manufacturer. The manufacturer may then submit a notice

under paragraph (e) of this section or a notice under section 5(a)(1) of the Act.

(4) If EPA determines that the manufacturer has shown a bona fide intent to manufacture the new chemical substance under the terms of this section, EPA will promptly inform the manufacturer whether the substance is being manufactured under this section. If the substance is not being manufactured under this section, the manufacturer may submit a notice under paragraph (e) of this section. If the new chemical substance is being manufactured under this section, the manufacturer may submit a notice under paragraph (e) of this section if the manufacturer can demonstrate that the additional human exposure to, and/or environmental release of, the new chemical substance resulting from its manufactured volumes will not present an unreasonable risk of injury to human health or the environment. If such demonstration cannot be made, the manufacturer must submit a notice under section 5(a)(1) of the Act or one of the other section 5 exemptions.

(m) *Exemptions granted under superseded regulations.* Manufacturers holding exemptions granted under the superseded requirements of § 723.50 (as in effect on [insert date 1 day before effective date of final rule]) shall either continue to comply with those requirements or apply for a new exemption pursuant to this section. If a new exemption for a chemical substance is granted under this exemption, the prior exemption for such substance shall be void.

(n) *Recordkeeping.* (1) Each manufacturer of a new chemical substance described in paragraph (c) of this section must maintain records of the annual production volume of the new chemical substance under the exemption and documentation of information in the exemption notice and compliance with the terms of this section. Such records must be retained at each facility owned or controlled by the exemption holder where the exempted substance is manufactured or processed. Records maintained under this paragraph must be retained for 5 years after the date of their preparation.

(2) Any person who manufactures a new chemical substance under the terms of this section must, upon request of a duly designated representative of EPA, permit such person at all reasonable times to have access to and to copy records kept under paragraph (n)(1) of this section.

(3) The manufacturer must submit the records listed in paragraph (n)(1) of this section to EPA upon written request. Manufacturers must provide these records within 15 working days of receipt of such request.

(o) *Compliance.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Submitting materially misleading or false information in connection with the requirements of any provision of this section is a violation of this section and therefore a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(4) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section, or act to seize any chemical substance manufactured or processed in violation of this section, or take other action under the authority of section 7 of the Act (15 U.S.C. 2606) or section 17 of the Act (15 U.S.C. 1616).

[FR Doc. 93-2773 Filed 2-5-93; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Parts 720

[OPPTS-50593;FRL-3889-9]

RIN 2070-AC14

Premanufacture Notification; Revisions of Premanufacture Notification Regulations; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) mandates that the Environmental Protection Agency (EPA, or the Agency) review the potential health and environmental effects of new chemical substances prior to their manufacture or import and take action to prevent unreasonable risks before they occur. Section 5(a)(1) of TSCA requires that persons notify EPA at least 90 days before they manufacture or import a new chemical substance for commercial purposes. Since 1979, EPA has reviewed over 20,000 section 5 notices for new chemical substances. During the intervening years, EPA has implemented a number of non-regulatory initiatives which have enabled the Agency to review a growing number of new chemical substances. In order to achieve further efficiencies and resource savings for both EPA and submitters of section 5 notices, the Agency is proposing a number of regulatory initiatives to reduce the administrative costs/burdens of the section 5 new chemicals program. These proposals would allow EPA to concentrate its limited resources on identifying and controlling those chemical substances most likely to present an unreasonable risk of injury to health and the environment.

DATES: Comments must be received by April 9, 1993. If requested, EPA will conduct public hearings on the proposed rule amendments. Requests to make an oral presentation must be received by April 9, 1993.

ADDRESSES: All comments and requests to speak at the public hearing must be sent to: TSCA Document Control Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (Phone: 202-260-1532).

Comments should include the docket control number. The docket control number for this amendment is OPPTS-50594. Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate (with additional sanitized copies if CBI is involved). Comments on this proposed rule will be placed in the rulemaking record and will be available in the TSCA Public Docket Office, Rm. NE-G-004 at the above address between 8 a.m. and 12 noon and 1 p.m. and 4 p.m., Monday through Friday, excluding public holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document, along with three other related documents, OPPTS-50594, 50595, and 50596 is available as an electronic file on *The Federal Bulletin Board* at 9:00 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512-1387 or call (202) 512-1530 for disks or paper copies. This document and the three related documents are available in Postscript, Wordperfect, and ASCII.

EPA published its final premanufacture notification (PMN) rule (40 CFR part 720) on May 13, 1983 (48 FR 21722) and subsequently amended certain parts of the rule on September 13, 1983 (48 FR 41132) and April 22, 1986 (51 FR 15096).

I Background

A. Authority

Section 5(a)(1) of TSCA requires that persons notify EPA at least 90 days before they manufacture or import a new chemical substance for commercial purposes. For the purposes of TSCA, a new chemical substance is one that is not listed in the Master File of the TSCA Chemical Substance Inventory ("the Inventory"), which consists of substances reported under the Inventory Reporting Regulations (40 CFR part 710) of 1977 and also added via Notices of Commencement of Manufacture or Import (NOC)(40 CFR 720.102) from submitters of premanufacture notices (PMN).

B. History/Rationale

In this document EPA is proposing to amend the Premanufacture Notification (PMN) Rule to reduce the costs of administering the New Chemicals Program and to implement other efficiencies for EPA and submitters. A discussion of the basis for these proposed amendments follows:

1. *Submission of correct chemical identities in section 5 notices and Bona Fide Inventory search notices.* Based on the information reported to EPA, each substance in the Inventory is accurately and uniquely identified by a chemical name that is both systematic and descriptive (either a Chemical Abstracts (CA) Index Name or a CA Preferred Name). For each of the substances whose identities have not been claimed as confidential business information (CBI) by its submitter, a Chemical Abstracts Service Registry Number (CASRN) is also assigned to further identify that substance in the Inventory.

Since the compilation of the Inventory in 1979, EPA has routinely conducted Inventory searches to determine whether each substance newly reported in a PMN or a Bona Fide Notice is already listed. Whenever the Agency can quickly determine that a reported substance is already included in the Inventory, a submitter of a Bona Fide Notice does not have to file a PMN. Similarly, rapid searches of the Inventory may preclude submitters of section 5 notices from waiting for PMN review periods to expire. This may result in considerable time and resource savings for both industry and EPA, and eliminate the expenditure of resources to review or estimate the properties of such substances.

For both PMNs and Bona Fide Notices, a submitter must provide chemical identity information that EPA considers sufficient to accurately describe the substance in question. For PMNs, these requirements are specified at § 720.45(a), and the corresponding requirements for Bona Fide Notices are stipulated at § 720.25(b)(2)(i). An accurate chemical identity is not only necessary for determining whether a substance is included in the Inventory, but also to accurately assess the risk of a new substance and ensure that the substance EPA reviews is precisely the substance the submitter intends to manufacture or import.

Over the past 13 years of the PMN program, EPA has spent a considerable amount of time and resources developing the precise chemical identification data on PMN and Bona Fide Notice substances that are necessary for searching the Inventory and accurately assessing risk. The Agency's resource expenditure on a PMN or Bona Fide Notice is significant even when the chemical identity information is reported correctly. However, at least 25 percent of the submitted notices contain errors, discrepancies, or ambiguities in the reported chemical identity information. The process of identifying and notifying submitters of these problems, requesting and receiving acceptable corrections for the originally submitted information, and keeping track of the delays and suspensions of notice reviews during the correction process multiplies the Agency's initial review burden and utilizes an excessive amount of limited Agency resources.

Therefore, the Agency is proposing to require that submitters of section 5 notices and Bona Fide Notices provide for each reported substance the most currently valid CA Index Name or CA Preferred Name that is consistent with TSCA Inventory listings for similar substances, in order to reduce delays caused by incorrect or ambiguous chemical identities, to expedite Inventory searches, and to save resources. EPA believes this proposed requirement would benefit submitters as well as the Agency.

One of the principal benefits of this proposed amendment to submitters of new chemical notices is that the percentage of cases currently delayed or suspended due to chemical identity problems would be significantly reduced, since submitters would have resolved most of the chemical identity problems, discrepancies, and uncertainties before reporting substances to EPA. A lower percentage of cases being delayed or suspended would not only correspond to a reduction in the number of technical inquiries and requests for additional information from EPA, but also decrease the administrative burdens involving suspended submissions that are currently borne by both the chemical industry and EPA. In addition, significant reductions in chemical identity problems and administrative delays would enable the Agency to issue more rapid responses to Bona Fide Notices.

The currently valid CA names to be required up front from submitters under this proposal would almost always be consistent with TSCA Inventory listings for similar substances, since Chemical Abstracts Service (CAS), the authority on CA nomenclature, assisted EPA in developing chemical nomenclature for the Inventory. The Agency has, to a large extent, adopted CAS' nomenclature conventions. Submitters can consequently benefit from this consistency by being able to know before the start of the Notice review period just how the Agency will identify their substances for TSCA purposes. This knowledge would assist PMN submitters who wish to prepare chemical product literature at an earlier time that identifies the substance to potential customers, and in the case of importers, to the U.S. Customs Service. In addition, this information would help reduce the need to submit PMN corrections or chemical identity amendments.

By establishing correct chemical identities before submitting Notices to EPA, submitters could also more capably conduct their own searches in public sources of Inventory data. As a result, they would be able to determine more often when substances are already included in the Inventory, thus avoiding the submission of unnecessary Notices.

Submitters' early knowledge of correct substance identities would also enhance the chemical industry's compliance efforts with TSCA regulations. A number of submitters in the past have at some point found themselves out of compliance with TSCA by failing to submit PMNs or Inventory correction requests for certain substances they incorrectly thought were on the Inventory. The chance of a submitter inadvertently violating TSCA due to his/her confusion about how EPA would identify a particular substance would be largely reduced if submitters knew firsthand how their substances would most likely be identified for Inventory purposes.

EPA would also derive considerable benefits from this proposal. The Agency would no longer have to devote such extensive resources toward determining correct chemical identities and the most appropriate Inventory descriptions of substances reported in PMNs and in Bona Fide Notices. The current resource

expenditure, already significant for each notice containing correct chemical information, is multiplied when the chemical identity information provided by submitters is incorrect, incomplete, or ambiguous.

This proposed amendment would also facilitate and lower the Agency's cost of searching the Inventory for newly reported substances. Since the Inventory has been continually developed based on CA nomenclature, Inventory searches would be easier to perform and more likely to identify matching listings with the use of correct CA nomenclature and CASRNs provided by submitters.

In order to reduce the chance that persons would unknowingly submit incorrect chemical names, this proposal would encourage submitters to obtain correct chemical identity information directly from CAS before reporting substances in PMNs and Bona Fide Notices. However, since the proposal allows submitters to obtain the specified chemical names from any source, persons would not be required to obtain this information from CAS.

2. *Revision of the Bona Fide Notice requirements for requesting Inventory searches.* Manufacturers and importers are responsible for determining whether a substance is a new chemical substance under TSCA and therefore whether they are subject to the section 5(a) notice requirements. The published TSCA Chemical Substance Inventory: 1985 Edition and the 1990 Supplement to the 1985 Edition Of The TSCA Inventory can often be used to determine whether specific chemical substances are already included in the non-confidential portion of the Inventory. Computer tapes containing chemical names listed in the Inventory, which are updated on a semi-annual basis and which the public can purchase from the National Technical Information Service (NTIS), can be used as alternatives to the printed Inventory editions for this purpose. In addition, persons may also choose to conduct searches of the non-confidential portion of the Inventory by accessing the services of any of several commercial or government databases containing Inventory substance information. In 1986, EPA discontinued its service of responding to public requests for routine searches of the non-confidential portion of the Inventory. However, the Agency continues to respond to written inquiries regarding complex chemical identification issues or clarification of Inventory nomenclature or listing policies.

Substances for which the chemical identities are claimed as CBI are listed by TSCA accession numbers and generic chemical names in the publicly available Inventory. Each generic name describes a possible set of similar substances in order to serve as a masked identity for a specific confidential chemical substance. If a chemical substance is listed on the public Inventory under a generic chemical name, it is usually difficult for the public to determine whether a specific substance consistent with that generic name is really a new or existing substance under TSCA. It has always been the Agency's responsibility under the statute to protect from public disclosure any information reported under TSCA that submitters claim as CBI. EPA protects each confidential substance identity by publishing only the generic chemical name chosen or agreed to by its submitter.

To enable a person to know if a given substance matches a confidential chemical substance identity listed in the Inventory, EPA established procedures at § 720.25(b) to inform persons whether a substance they intend to manufacture or import is already included in the Inventory, or whether the substance is considered a new chemical substance subject to the section 5(a) notification requirements. Under these procedures, a person requesting this information from EPA first must demonstrate a bona fide intent to manufacture or import the substance by submitting in writing the information required at § 720.25(b)(2). EPA will not honor any other request to search the confidential portion of the Inventory, since EPA can only disclose the existence of a confidential Inventory substance to a third party upon the Agency's receipt of a Bona Fide Notice, as stipulated in the Inventory Reporting Regulations and the PMN Rule, at § 710.7(g)(1) and § 720.25(b)(1), respectively.

Over the past several years, the number of Bona Fide Notices submitted to EPA has steadily increased. Of the Bona Fide Notice substances not found in the Inventory, approximately half have not been subsequently reported in PMNs by the submitters. This phenomenon is unexpected since in the Bona Fide Notice submitters included signed certification statements of their intention to manufacture or import these substances for commercial purposes. Further, there are a growing number of Bona Fide Notices which are found to be incomplete for which submitters fail to subsequently provide complete information, long after EPA notifies them that the minimum information requirements have not been met. These circumstances imply that many Bona Fide Notice submitters may not have a demonstrable intent to manufacture or import these substances.

Although EPA understands that changing business situations can nullify a company's commercial intentions, it is likely that many submitters have reported their bona fide intent prematurely, perhaps before they have sufficiently assessed the technical viability, marketability, or profitability of the substance. The Agency believes that submitters should have reached positive decisions on these and other criteria before genuinely possessing bona fide intentions to commercialize substances. Alternatively, many other submitters may have conditionally intended to commercialize certain substances, depending on whether or not the substances were already included in the Inventory. EPA believes that neither of these circumstances is consistent with a bona fide intent to manufacture or import under TSCA, according to the spirit and intent of § § 710.7(g)(1) and 720.25(b)(1).

In an attempt to promote the submission of Bona Fide Notices that reflect serious commercial intentions, EPA proposes to amend the PMN Rule and the Inventory Reporting Regulations by revising the requirements for Bona Fide Notices, such that the submitted information would more clearly demonstrate a genuine intention to manufacture or import a given substance for a commercial purpose. The Agency believes that the amended provisions of this proposal represent a well-balanced tradeoff from the existing information requirements and will help to ensure the integrity of the Bona Fide Notice program. The amended provisions would not require submitters to generate any new information that they would not already be likely to know at the time they truly have bona fide intentions. The required information concerns basic business and technical questions that any submitter would have already answered in order to make an informed decision to manufacture or import a substance. If one has not already invested the time and effort to seriously think about and answer the types of questions posed by the amended provisions, the Agency believes that it is highly unlikely that this person has established a bona fide intent to manufacture or import the substance. Thus, the revised provisions should not constitute an increased burden to submitters, since persons with a demonstrable bona fide intent should have already answered these questions before a manufacturing or importing decision is reached, and would be able to benefit from or utilize the information developed and obtained in responding to the questions.

EPA believes that these amended revisions would also improve the Agency's ability to protect the CBI of persons submitting notices under TSCA. It has always been the responsibility of EPA to protect from public disclosure any information reported under TSCA that submitters claim as CBI. According to § § 710.7(g) and 720.25(b), a specific chemical identity listed in the confidential Inventory can only be disclosed to a third party if that person has demonstrated a bona fide intent to manufacture or import the substance for a commercial purpose. Under the present provisions, however, there is the chance that some CBI may be disclosed to Bona Fide Notice submitters that, unknown to EPA, do not have genuine intentions to commercialize substances. Requiring Bona Fide Notice submitters to provide the information requested by the proposed amendments would improve the Agency's ability to protect the CBI of the original submitters of Inventory-listed substances by enabling the EPA to be more selective about which Bona Fide Notice submitters are entitled to receive specific CBI concerning Inventory-listed substances. Consequently, all submitters of PMNs for substances subsequently added to the Inventory or initial Inventory reporting forms could benefit from the resulting enhanced integrity of the Bona Fide Notice program. In addition, EPA would not have to spend significant resources processing notices that do not represent serious commercial intentions.

3. *Amendment of the "Two Percent Rule" for polymers to allow submitters greater flexibility in determining the amount of monomer or other reactant used in the manufacture of a polymer.* The PMN rule requires reporting new polymers on the basis of the amounts of monomers and other reactants used in the reaction, "as charged" to the reaction vessel, and on the dry weight of the polymer manufactured. This approach, which has been in effect since the Inventory reporting regulations were published on December 23, 1977 (42 FR 64572), was adopted because the Agency and the regulated community believed it would be difficult to identify the exact amount of monomers or reactants incorporated in the final polymer. The method of reporting the percent composition of monomers and other reactants "as charged" was viewed as a reasonable approach by chemical and polymer industries.

Due to advanced analytical capabilities developed over the intervening years, certain polymer manufacturers have asked EPA to revise the current "Two Percent Rule" to allow manufacturers the option of determining the amounts of monomers and other reactants that are "in chemically combined form" (incorporated) in a polymer as an alternative to the current practice of requiring reporting based on the amounts added (charged) to the reaction vessel. EPA has considered industry's request and is proposing an amendment to the "Two Percent Rule" to allow this optional reporting procedure. The Agency believes that allowing submitters to report on the basis of amounts incorporated in the polymer could provide a better indicator of physical, chemical, and toxicological properties of polymers. At the same time, this would allow manufacturers greater flexibility in commercial innovation, reduce the number of unnecessary PMNs representing slight variations in polymer composition, and provide greater consistency with international reporting policies. However, as will be described below, the Agency believes there are certain drawbacks and burdens involved in using the method of computation based on incorporated amounts of monomers and reactants.

Under the proposal, manufacturers would still be allowed to use the "amounts charged" method to determine the polymer chemical identity. However, they would also have the option of determining the amounts incorporated in the manufactured polymer. If a company chooses the latter method, EPA believes that it is reasonable to require that such manufacturers maintain in their records analytical data that demonstrate that the amounts of monomers and other reactants incorporated in the manufactured polymer have been accurately determined. This will allow the Agency and the company to verify compliance in a straightforward manner.

EPA recognizes that it was a matter of convenience, rather than one of science, to have thus far required reporting of the amounts of polymer reactants charged rather than the amounts incorporated; the former method requires only "bookkeeping", while the latter may require extensive and expensive analytical work.

After nearly 13 years of experience with the Inventory and PMN reporting rules, however, chemical manufacturers and EPA reviewers have come to realize that the convenience of the "amount charged" approach has drawbacks. In particular, the current approach of identifying many polymers based on monomers and reactants charged to the reactor in quantities significantly larger than the amounts found to be incorporated in the polymer does not properly represent the physical, chemical, and toxicological properties of the polymer.

Under the PMN rule, inefficiently incorporated reactants, reactants charged in large excess, and reactants with other functions besides their reactant ones are often likely to produce reportable polymers, even though the degree of chemical incorporation may be less than or equal to 2 percent. For example, free-radical initiators are often charged in quantities greater than 2 percent in order to start many polymer chains simultaneously and limit the amount of high-molecular-weight polymer produced. Chemical incorporation is inefficient, since many processes other than chain initiation can consume the initiator. The weight of the final polymer that can be attributed to fragments originating from the initiator is often less than two percent by weight. A manufacturer may use many different initiators, all charged at greater than 2 percent, to produce what would be the same polymer if the "incorporated" method of computation was used. The result has been what many manufacturers believe to be excess reporting. Similar problems arise with solvents that have reactive functions, and with neutralizing agents used in excess of their salt-forming capacities. Technical details concerning the "Two Percent Rule" are contained in the paper entitled, "Supporting Document on Computation of Weight Percent of Reactants", which is available in the public docket for this document [OPPTS–50593].

Since the Agency has always believed the actual content of a polymer to be a better indicator of its physical, chemical, and toxicological properties, and settled upon the "amount charged" method of computation as a matter of convenience to industry, it now seems reasonable, in the light of experience, to allow the submitter to optionally use the amounts of monomers and other reactants incorporated, basing the computation on the "imputed charge" as described in the public docket for this document. Therefore, EPA is proposing an amendment to allow optional use of the method to determine percentage composition based on the amounts of reactants present in chemically combined form in the polymer.

The use of the "incorporated" method may have regulatory consequences. The percentage of chemical incorporation of a given reactant, and its "imputed charge" value, could possibly change and result in the need to submit an additional section 5 notice if there was

a modification in the manufacturing process, either inadvertent or intentional, even if there was no change in the amounts and identities of the reactants charged to the reaction vessel. Changes in reaction temperature, in the type of catalyst or solvent used, or in the method and/or order of charging the reactants to the reaction vessel are examples of such processing modifications that could possibly affect the degree of chemical incorporation and the "imputed charge" of a given reactant when the charged amounts of reactants remain unchanged. Such a change could hypothetically cause the weight percentage of a minor reactant to increase from less than or equal to 2 percent to above 2 percent, resulting in the automatic requirement that this reactant be included in the Inventory description of the polymer. If this reactant was not originally intended to be included in the polymer identity for TSCA purposes, the processing change could result in the isolation of a different, reportable polymer substance before a section 5 notice was submitted. Consequently, persons could find themselves in violation of the PMN Rule, even though the charged amounts of the reactants had never been changed. Compared to using the "as charged" method, it would be more difficult to prevent this type of potential TSCA violation when the computation method based on incorporation is used. Thus, the potential regulatory liability to industry could increase to the extent that the "incorporated" method is used.

The proposed amendments make clear that an Inventory correction request or a PMN correction request received after the end of the notice review period will not be allowed to cover a new polymer identity that may occur if a processing change causes the "imputed charge" value of a reactant to increase from less than or equal to 2 percent to above 2 percent, when reported percent composition data are based on amounts incorporated. In addition, an Inventory correction request or a PMN correction request received by EPA after the end of the notice review period will not be allowed to cover a change in the TSCA chemical identity of a polymer that may occur if a submitter changes computation methods from the "incorporated" method to the "charged" method, or vice versa. A chemical identity correction request of this type will only be accepted if this request is received by EPA during the applicable section 5 notice review period.

4. *Submission of multiple photocopies of section 5 notices.* EPA, in order to complete its review of each section 5 notice within statutory timeframes, must currently make multiple copies of the PMN form and any accompanying documents to make them available to many technical reviewers in the Agency simultaneously. Making these copies presents difficulties in terms of time and expense to the Agency. For example, some documents received are in non-standard sizes, or have other characteristics that make photocopying difficult. Further, duplication of documents containing CBI requires special handling procedures. These problems lead to inevitable time delays for staff access to documents. Therefore, the Agency is proposing an amendment to require that, in addition to the original copy of the section 5 notice and attachment(s), plus one sanitized copy in which CBI has been deleted, submitters provide EPA with two additional copies of the notice itself that include all continuation sheets for information required in the notice and two additional copies of test data, other data, and any optional information provided as attachments to the notice. EPA believes that this proposal will expedite the PMN review process by allowing reviewers to have access to the documents in a more timely manner and enabling the Agency to shift resources from photocopying services to scientific reviews.

5. *Electronic transmission of section 5 notices.* EPA is proposing to amend § 720.40 to allow reporting via magnetic or other electronic media. Because the Agency is still in the early stages of planning for reception of electronic submissions, it is premature to specify a format. However, the Agency is developing standardized electronic reporting formats and mechanisms such as submission by magnetic tapes, diskettes, and electronic forms. EPA believes that transmission of submissions via electronic media may be quicker than mail, if Electronic Data Interchange (EDI) is adopted as a transmission mechanism. In any case, direct loading of data to a computer system is more efficient than keystroke data entry and ensures data quality. Readers are referred to the **Federal Register** of July 30, 1990 (55 FR 31030) for further discussion of the Agency's policy on electronic reporting.

6. *Standard form for Notices of Commencement (NOC).* Manufacturers and importers are required at § 720.102(b) to submit a NOC to EPA's Document Control Officer within 30 calendar days of the first day of manufacture or import for a commercial purpose. The NOC must be submitted by the PMN submitter. Currently, there is no required reporting form for a NOC. Although EPA provides a voluntary one-page NOC form to submitters with PMN receipt acknowledgement letters, submitters may use any type of letter or form that includes the necessary information. Many submitters routinely use the NOC form, and its use has simplified EPA's receipt of NOC information. In cases where the voluntary NOC form is not used, a significant number of NOCs has created difficulty because they were not recognized as NOCs or contained confusing, missing, or unnecessary information. These problems have resulted in a waste of time and resources for both submitters and EPA personnel who must prepare or review these notices.

EPA is proposing the mandatory use of a one-page NOC form, which the Agency believes would enable all NOC submitters to benefit from the simple, quick NOC process that users of the voluntary form already possess. The required use of such a form would also reduce EPA processing time for NOCs.

C. Other Initiatives Being Considered

The Agency is also considering the following initiatives but is not proposing any additional PMN rule amendments at this time.

1. *Development of requirements that all reporting facilities provide certain information about their geographic location.* To date, for PMN reporting purposes, the Agency has requested the street address of manufacturing, processing, and use facilities under the control of the submitter. The Agency is currently considering developing requirements for an EPA-wide policy which would require that all facilities reporting under any EPA-administered program provide certain information about their geographic location beyond the general street address. This information would assist environmental analyses and allow data to be integrated based on specific locational information. In addition, this approach would promote enhanced use of EPA's extensive resources for cross-media environmental analysis and management decisions. The policy is expected to include: latitude/longitude coordinates, specific method used, a text description of location, and an estimate of accuracy. In order to incorporate this policy into the PMN rule, the Agency has established a workgroup to analyze and propose requirements for this type of specific information in section 5 notices in order to better describe the sites of manufacture and processing of a new chemical substance. The Agency is requesting comments on whether this

information should be included in all section 5 notices and NOCs.

At some future date, the reporting forms for all section 5 submissions may be revised to provide space for the entry of latitude/longitude coordinates for each site of manufacture, importation, or processing under the submitter's control, an indication of the specific method used to determine coordinates, a text description, and an estimate of accuracy. Many companies already report this data under other EPA rules, so providing this data would not be unduly burdensome. Also, it need only be determined once per facility, as the latitude/longitude coordinates presumably wouldn't change. Possible issues include the definition of "facility", as the site of research and development activity may be different than that of manufacture or importation. The possible need to submit additional and/or updated locational data with the NOC is also being studied.

2. *Enhanced review of all confidential claims submitted to the Agency.* The Agency is not proposing to amend the language of the rule pertaining to CBI. However, EPA is giving notice that it intends to review each PMN submission containing a CBI claim and make appropriate determinations on the validity of that claim. This higher level of scrutiny arises from EPA's conclusion that claims for CBI protections are being used indiscriminately without regard to statutory or regulatory restrictions. Because of this, and the need to handle all claimed material as CBI until such claims are verified, withdrawn, or rejected, CBI procedures consume an inordinately large amount of Agency resources that may not be justified.

EPA requests that PMN submitters carefully review and tailor each CBI claim so that only that information which must be confidential is claimed CBI. Submitters should review the statutory CBI provisions contained in TSCA section 14, the general CBI regulatory provisions contained in 40 CFR chapter I, § 2.201, et seq. and the specific PMN CBI regulatory provisions contained in 40 CFR 720.80, et seq. before making any confidentiality claims.

Furthermore, if a submitter chooses to submit a CBI claim in a PMN (or other section 5 notice), the submitter must provide a copy of the submission (including all health and safety data) for the public file with all confidential data deleted as required at § 720.80(b)(2). The failure to comply with this requirement may result in the PMN being declared incomplete in accordance with § 720.65. If the submission is declared incomplete the notice review period for the PMN substance will not begin until the matter is rectified.

The confidentiality provisions of the Rule take into consideration the various requirements of the Act, including the need: (1) To provide nonconfidential material to the public, (2) to give EPA information it needs to respond to Freedom of Information Act (FOIA) requests, (3) to allow persons to assert claims of confidentiality, and (4) to reduce uncertainty about the criteria EPA will use in making confidentiality determinations.

The regulated community is reminded that confidentiality claims asserted in the PMN, including those for chemical identity, will be reviewed in accordance with the procedures set forth in 40 CFR part 2, subpart B.

Concerning chemical identity information included in health and safety studies provided in the PMN, the Agency considers the specific chemical identity always to be part of a health and safety study even when it does not appear in the study. As such, under TSCA section 14(b), EPA may not withhold from the public the data from health and safety studies, including specific chemical identity. The only exception to this policy is if disclosure would reveal confidential processes used in the manufacturing or processing of a chemical substance or mixture, or reveal the proportions of a mixture, or if the specific chemical identity is wholly unnecessary to interpret the health and safety studies. This issue was previously discussed in the final PMN rule of May 13, 1983 (48 FR 21739–21740). Specific language regarding EPA's authority to deny certain claims for confidentiality in a health and safety study appears at 40 CFR 720.90.

Lastly, with regard to CBI claims filed in a NOC, submitters are reminded that under no circumstances may they assert a CBI claim for chemical identity in an NOC if the submitted chemical identity was not claimed CBI in the PMN.

CBI claims asserted for chemical identities submitted in PMNs are not automatically renewed upon Notice of Commencement. EPA, consistent with the NOC regulations at § § 720.102 and 720.85(b), requires CBI assertions for the chemical identity of a substance to be fully substantiated upon Notice of Commencement. Despite the existence of a CBI claim for chemical identity in the NOC, the chemical identity will be placed on the public Inventory without further notice from EPA if not accompanied by appropriate substantiation of this CBI claim.

II. Discussion of Proposed Amendments

1. *Correct chemical identity.* EPA is proposing to amend § 720.45(a) of the PMN rule to require that submitters of section 5 notices and Bona Fide Notices provide the most currently valid Chemical Abstracts (CA) Index Name or CA Preferred Name for each reported substance that is consistent with TSCA Inventory listings for similar substances. This proposal will require that a currently valid Chemical Abstracts Service Registry Number (CASRN) consistent with this CA Name also be reported for the substance if it already exists for that substance. Under the current PMN Rule, CA nomenclature is indicated as a preferred, but not a required, chemical naming system for PMN reporting. Therefore, submitters can presently identify the PMN substance using alternative nomenclature. The proposal would retain all of the other chemical identity information required at § 720.45(a), including molecular formula and chemical structure information. However, for substances not able to be characterized by a single chemical structure, the submitted structural diagram must be as complete as one can reasonably ascertain. Failure to fully comply with the chemical identification elements of this requirement would result in the notice being declared incomplete by EPA pursuant to § 720.65(c)(1). Such incomplete notices will not be processed or reviewed by the Agency until the chemical identification requirement is satisfied.

Although a CAS Registry Number (CASRN) is not routinely required for a reported substance if a CASRN is not already available, and though the proposal only requires that CASRNs be reported for substances that already have them, EPA strongly recommends that submitters provide CASRNs for all reported substances, especially when the chemical identity is not being claimed as CBI. Having more substances reported with CASRNs would save EPA resources involved with chemical review and Inventory searching. Submitters would provide a CA Index Name or CA Preferred Name that is consistent with the application of the 9th Collective Index (9CI) of CA nomenclature rules and conventions. Whether to report a CA Index Name or Preferred name for a substance depends on how well-defined the chemical identity of the substance is with respect to the existence of a definite molecular formula to describe it; any given substance can only be properly assigned either a CA Index Name or a CA Preferred Name, according to CA

nomenclature policies. A CA Index name is assigned to any substance having a known molecular formula, whereas a CA Preferred Name is given to any substance having no definite molecular formula.

For well-defined substances appropriately named using CA Index nomenclature, the specific chemical name chosen as most accurately describing the substance should be based on all that the submitter can reasonably ascertain about its chemical structure, including, where applicable, the degree of structural specificity of the substance (i.e., whether or not specific isomers are intended to be produced in a reaction). For poorly defined substances properly named using CA Preferred nomenclature, the specific name of choice should be based on the submitter's knowledge of the identities of the chemical precursors used, the sources of the reactants (i.e., synthetic, isolated or obtained by processing from certain naturally occurring materials, etc.), the nature of the reaction, and the types of chemical substances constituting the product combination, etc.

For any type of substance reported, one needs to consider whether there are any impurities or byproducts of no commercial value existing in the product composition in order to know which product components are reportable. Impurities or byproducts of no commercial value are not considered reportable substances under TSCA.

When more than one substance results from a reaction, one should determine whether or not the product combination can be viewed for TSCA purposes as a mixture of separately reportable substances. For example, when the intended product combination is known to always be completely composed of a specific number of identified substances that do not react with one another, the combination can be represented as a mixture under TSCA. If this is not the case, then a single chemical name must be used to collectively describe the product combination as one substance.

Concerning the degree of chemical structure information that can be reasonably ascertained for a given substance, submitters should understand that, for TSCA Inventory purposes, all substances are categorized by EPA into two groups according to the degree of certainty about the chemical structure of a substance: Class 1 and Class 2. Class 1 substances are those of precisely known chemical composition for which a single, complete structural diagram can be drawn. Class 2 substances are those having chemical compositions not completely definite or known and, therefore, they cannot be characterized by definite, complete chemical structure diagrams. This proposal would require complete structural diagrams to be provided for Class 1 substances; Class 2 substances would require partial structure diagrams that are as complete as can be ascertained from the Class 2 chemical identity.

This proposed chemical identification requirement could be satisfied if the submitter uses the services of CAS, or the services of another chemical information organization, service bureau, or consultant that the submitter considers capable of generating correct CA names, chemical structure diagrams or molecular formulae where appropriate, and obtaining necessary CASRNs. Alternatively, the submitter could search publicly available databases to retrieve this information, if available, or attempt to generate a name without assistance from another person or organization, if the submitter has sufficient knowledge about CA SCI nomenclature rules and conventions and about how similar substances should be named for the Inventory. Information describing CA nomenclature rules and conventions can be obtained from CAS. Printed copies of the non-confidential Inventory can be purchased from the Government Printing Office, and computer tapes containing this Inventory information can be purchased from the National Technical Information Service (NTIS).

Regardless of who or which mechanism the submitter uses to determine correct chemical identifications, in order to obtain the currently correct chemical names for substances before reporting them to EPA in section 5 notices or Bona Fide Notices, submitters would be expected to provide the party generating the CA nomenclature with the same chemical identity information that the submitter would have to send to EPA if reporting the substance in a PMN: the same types of information, levels of detail, and degrees of specificity, etc. The party assigning a chemical identity for the purpose of a substance being reported in a PMN or Bona Fide Notice should ensure that the name choice reflects the current CA nomenclature rules and conventions, as well as how similar substances are named for the Inventory, or else the chemical name will be incorrect and the notice could be declared incomplete by the Agency.

In order to meet the proposed requirement, submitters could choose between two optional methods of obtaining the chemical identification of any substance to be reported. These alternatives are described below as Method 1 and Method 2. Submitters would need to indicate in each notice which of the two methods is being used.

Method 1. A submitter using this method would obtain the correct chemical identification directly from CAS prior to submitting a notice to EPA. EPA understands that CAS would set up and operate a special extension of CAS Registry Services for identifying substances to be submitted under TSCA. CAS would provide such services pursuant to arrangements between CAS and persons informing CAS that their substances will be reported to EPA in a PMN, an exemption application, or in a Bona Fide Notice.

Submitters would call or write CAS directly for complete instructions on how to use the special extension of CAS Registry Services for TSCA submitters.

Submitters would be required to provide a copy of the chemical identification report obtained from CAS along with the completed PMN, to verify that they obtained the information directly from CAS.

EPA believes that most submitters would find it advantageous to utilize the services of CAS to meet this requirement. CAS is generally recognized as a world authority on substance identity, and is the ultimate source of the most current and correct CA nomenclature and CAS Registry Numbers. Furthermore, only CAS can generate new CAS Registry Numbers. CAS also developed the nomenclature conventions that are widely used by other organizations throughout the world, and has, since 1977, assisted EPA in the development of the TSCA Inventory and the identification of the Inventory's substances. Many submitters of section 5 notices have been voluntarily obtaining chemical identities from CAS on a routine basis before reporting substances to EPA, thereby benefitting from the early recognition and resolution of chemical identity uncertainties. Furthermore, due to CAS' familiarity with TSCA Inventory and nomenclature policies, EPA believes that chemical names and other chemical identity information assigned by CAS according to this method would almost always be acceptable to the Agency. For these reasons, EPA would strongly recommend that submitters use the services of CAS to satisfy the amended provisions.

Submitters should note, however, that if EPA disagrees with the identification assigned by CAS to a given substance, the Agency reserves the right to be the final authority on how a reported

substance should be named and represented for the Inventory. In the rare event EPA does not agree with a chemical name, CASRN, chemical structure or molecular formula provided to a submitter by CAS for TSCA purposes according to Method 1, EPA would work with CAS under an existing technical support contract to either modify the submitted chemical identity when necessary or confirm that the CAS' identification is most appropriate, to ensure that a correct TSCA description is assigned. Using Method 1, there would be no delay or additional cost to the submitter resulting from an identification error by CAS or an identity verification request by EPA, and the review period would continue uninterrupted. EPA would assume responsibility for resolving chemical identity problems occurring when Method 1 is used.

Method 2. Using this method a submitter may obtain the required chemical identity information from any chemical information organization, service bureau, or consultant, from someone on the submitter's staff, or can retrieve or develop the proper CA identifications himself/herself. EPA emphasizes that with this method submitters would need to provide for each substance a correct CA Index or Preferred Name and other chemical identity information, as stipulated under § 720.45(a), that are consistent with Inventory listings for similar substances. It would be the submitter's responsibility under Method 2 to seek the required information from a source the submitter believes to be sufficiently knowledgeable about CA nomenclature conventions and TSCA Inventory listings.

In contrast to Method 1, if a submitter uses Method 2 and reports any chemical identity information that is considered incorrect by EPA, the submitter, not the Agency, would be considered responsible for correcting the chemical identification. EPA would declare such a notice incomplete under § 720.65(c)(1) and would not further process or review it until the submitter provides the fully correct chemical identity information stipulated under the proposed amendment.

Concerning the task of generating correct CA nomenclature, it should be noted that there are many chemical names on the CAS Registry File, particularly CA Preferred Names used for indefinitely described substances, that are not appropriate for uniquely identifying substances on the Inventory. Thus, the application of just the CA nomenclature rules to name a new substance would not guarantee an acceptable chemical name for TSCA purposes. One must also be familiar with the ways in which similar substances are listed in the Inventory.

Regardless which method is chosen by a submitter for properly identifying a reported substance, EPA remains the final authority in naming new substances under TSCA.

In order for submitters to have ample time to become familiar with the process of obtaining chemical identity information from CAS, another chemical information service, or a consulting party for obtaining chemical identifications, it is recommended that submitters contact their chosen source at least 1 or 2 months before the intended submission date of a notice. This is especially important the first time one would have to report under this proposed amendment.

EPA would also caution submitters, however, not to obtain or develop a chemical identification more than several months ahead of when they intend to submit a notice for the substance to the Agency. Due to occasional changes or modifications in CA nomenclature rules and conventions, a CA name that was not recently obtained or developed could represent obsolete CA nomenclature and, therefore, be incorrect or inappropriate for Inventory listing purposes by the time a notice is submitted. The Agency occasionally updates its Inventory listings for existing substances having identities that are affected by revised CA names and changes or modifications in CA nomenclature rules and conventions.

EPA anticipates that many submitters would consider chemical identity information and/or submitter identity information given to CAS (by Method 1) or another third party (by Method 2) to be confidential or trade secret information. It is the position of EPA that no information can qualify as TSCA-CBI until it is received by EPA in a notice reported under a provision of TSCA. Therefore, provisions for handling any confidential information first submitted to CAS or another outside party must be arranged directly with that party. Submitters should not assume that CAS or another outside party is required to adhere to EPA-regulated TSCA-CBI procedures regarding the possession, handling, labelling, storage, tracking, auditing, or other processing of this information.

However, based on currently available information, it is EPA's understanding that any confidential, proprietary, or trade secret information that CAS would receive by Method 1 of this proposal prior to it being reported to EPA would be handled in accordance with the long-established security procedures and policies that CAS has implemented to safeguard any confidential information provided by its customers. A considerable number of large corporations and government agencies appear to have entrusted their confidential substance information to CAS for database building and ongoing search/retrieval projects. There have also been many customers of CAS Registry Services, including submitters of section 5 notices, who have submitted their confidential substance descriptions for assignment of CA names or retrieval of existing CASRNs. Thus, it appears that CAS has had considerable experience in meeting the expectations of outside organizations for protecting their confidential information.

When submitting a chemical to CAS or any other information service, a submitter who indicates that the substance identity is confidential information should be aware that a CASRN for that substance may already exist due to CAS' prior knowledge from another source of the existence of that substance. In such a case, the chemical identity will already have been assigned a CASRN and placed by CAS in its publicly accessible files. Based on its knowledge of CAS' procedures, EPA believes that CAS currently does not place the substance identity into the publicly available CAS Registry File, if not already present there, when a submitter has requested confidential treatment of the information. However, EPA cannot ensure that CAS will continue this practice in the future, nor can EPA ensure how other services handle this type of information. As always, it is ultimately the submitter's responsibility to ensure that the information service it chooses to employ properly protects the confidentiality of its data, and does not utilize this information for its own gain against the wishes of the submitter.

Submitters choosing to use Method 2 should inquire how any other information service, consultant or party receiving their confidential information will handle, protect, and use such information.

Submitters sometimes do not possess complete chemical identity information about a substance they intend to import because of the proprietary chemical identity claims of certain foreign chemical exporters. In such situations, when the foreign exporter will not disclose confidential chemical identity information to the importer who submits a section 5 notice or Bona Fide Notice, submitters would be expected to

request that the foreign exporting party follow the procedures specified by either Method 1 or Method 2. The chemical identity information could then be provided directly to EPA by the foreign supplier as a joint submission or as a letter of support which references the importer's notice and PMN User Fee TS Identification Number, according to 40 CFR part 700.

Some submitters of section 5 notices or Bona Fide Notices only know part of the chemical identity of their substances, because they contain or are manufactured from purchased substances having specific chemical identities that may be claimed confidential by the supplier. In such cases, the submitter typically identifies the substance only by tradename, generic chemical name, or in terms of partial composition information listed in a Material Safety Data Sheet (MSDS) or in other product literature.

In this situation, due to the complexity and logistical obstacles to generating correct CA nomenclature and other chemical identity information for a substance based on multiple submissions from different sources, EPA is not asking either the submitter or the chemical supplier to first develop or obtain a correct CA chemical identification of the given substance. Rather, the notice submitter would first report whatever is known about the substance identity to EPA in the section 5 notice or Bona Fide Notice, and would arrange for the supplier of the proprietary substance to send a letter of support containing the specific chemical identity of the supplied chemical directly to EPA, referencing the submitter's notice and User Fee TS Identification Number, if appropriate. The letter of support must contain the same PMN User Fee TS identification number used in the notice, so that EPA can be sure of properly linking the two submissions. EPA would not start the statutory review period until it receives all parts of a joint notice, or all necessary supporting documents providing chemical identity information for a notice.

2. *Revised requirements for Bona Fide Notices.* The Agency is proposing to amend § 720.25 to revise certain provisions of the procedures to establish a bona fide intent. The proposal would reduce or simplify existing analytical information requirements, modify or clarify other existing information requirements, and request three other types of information in notices. This section, with its amendments, would supersede the corresponding section of the Inventory Reporting Regulations [§ 710.7(g)].

Concerning the information currently required at § 720.25(b)(2) to establish a bona fide intent, the proposal would eliminate the need for elemental analysis data [§ 720.25(b)(2)(iv)] while reducing and simplifying the other analytical information requirements [§ 720.25(b)(2)(v)]. Two other parts of this section, regarding chemical identity information, and the description of research and development (R&D) activities and use [§ 720.25(b)(2)(i) and (iii), respectively] would be modified and/or clarified. There are three new information requirements that ask about the most probable manufacturing site and process to be used, as well as an approximate date when the submitter would be likely to submit a section 5 notice for the substance if it is not found in the Inventory. EPA believes that the proposal represents a balanced trade-off of requirements between the existing and amended provisions, which will enable persons to better demonstrate a bona fide intent while the Agency is better able to protect the CBI of the original submitters of Inventory substances. The additional information or data requested in the proposed amendment is easily ascertainable by the submitter, and would likely have been already determined by the time the submitter has a bona fide intent to manufacture or import a substance for a commercial purpose. Persons who have not obtained the information or made decisions about the substance requested by the proposed requirements would not appear to be at the proper commercial product development stage to have a true bona fide intent concerning this substance. According to § 720.25(b)(2)(i) of the proposed amendments, submitters of a Bona Fide Notice must provide, as stipulated in the amended provisions of § 720.45(a), a currently correct CA Index Name or CA Preferred Name, whichever is appropriate, a currently correct CASRN if the substance already has a CASRN assigned to it, plus a molecular formula and a complete or partial chemical structure diagram if they are known or reasonably ascertainable, as stated earlier in this Unit of the preamble. Having the currently correct CA identification for a substance is important to EPA, because the reporting of incorrect, inconsistent, ambiguous, or obsolete chemical names, molecular formulae or chemical structure information, or names that are not CA Index or CA Preferred Names, causes extra resources to be spent by EPA establishing the best descriptions for substances under TSCA, searching the Inventory, and performing risk assessments. Failure to fully comply with the chemical identification elements of this requirement would result in the notice being declared incomplete by EPA.

The proposed amendment would modify the current requirement for a description of R&D activities conducted to date on the substance and the purpose for manufacturing or importing it [§ 720.25(b)(2)(iii)]. Since two different types of information are requested in this section and many submitters have in the past inadvertently omitted one of them in their notices, EPA proposes to make the requirements clearer by separating its requests for descriptions of R&D activities and purpose for which the submitter will manufacture or import the substance into different parts of the amended rule text [§ § 720.25(b)(2)(iii) and 720.25(b)(2)(iv), respectively]. In § 720.25(b)(2)(iii)(A), EPA elaborates on its information request by listing some of the general types of R&D activities that should be reported. In addition, the year in which R&D was started by the submitter on the substance is also requested. EPA believes that these modifications will serve to better enable the submitter to indicate the scope and length of its commitment towards developing the substance for commercial use. EPA would prefer that this information be briefly stated in a few sentences.

In § 720.25(b)(2)(iii)(B), EPA would provide an alternative reporting requirement for importers who do not perform R&D activities on the substance and have no knowledge of R&D activities that may have been conducted outside of the United States. Such importers would be allowed, in lieu of presenting research or development information, to indicate for how long, and in which country, a given substance has been in commerce outside of the United States, as well as to state whether they believe that the substance has already been used outside of the United States for the same commercial application(s) intended by the submitter. This alternative requirement would be similar to the current, informal EPA practice allowing such a prospective importer to satisfy § 720.25(b)(2)(iii) by providing certain information on foreign commercial activity of the substance.

In 40 CFR 720.25(b)(2)(iv), for clarity, the term "purpose" has been replaced by the phrase "major intended application or use" because some submitters have misunderstood the type of information being requested and have not provided a description of the intended end use.

EPA is proposing to simplify the analytical data requirements at § 720.25(b)(2)(v) to reflect the current practice of most submitters to provide an infrared spectrum to characterize the chemical substance. The proposal will require an infrared spectrum, unless infrared analysis is not suitable for the substance or does not yield good structural information for the substance. As an alternative in such cases, the proposal requires one to submit a spectrum or instrumental readout from another method of spectral or instrumental analysis that yields better structural or compositional information.

Section 720.25(b)(2)(vi) of the proposed amendment consists of a minor but new information requirement to estimate the month and year in which the person would intend to submit a section 5 notice for the substance if it is not found in the Inventory. EPA believes that a Bona Fide Notice submitter would have already thought about a future timeframe for reporting the substance under section 5 if it is a new chemical substance. The intent of this requirement is not to legally bind the submitter to a certain date for submission of a PMN. However, the information would be one of many factors which will help EPA to determine whether the person has demonstrated a bona fide intent. Also, if EPA could anticipate how many Bona Fide Notice submitters may report their substances in PMNs in a given year, the Agency may be able to better allocate resources for reviewing them.

Section 720.25(b)(2)(vii) of the proposal is a new requirement requesting the address of any one site under the submitter's control where the substance is anticipated to most likely be manufactured or processed in the future for a commercial purpose.

Section 720.25(b)(2)(viii) of the proposal is a new requirement by which a manufacturer must briefly describe the most probable manufacturing process that the submitter would use to produce commercial quantities of the substance. Importers would have the alternative of briefly describing how the substance would most likely be processed or used at a site controlled by the submitter, or if no processing or use of the substance is anticipated to occur at a submitter-controlled facility, a submitter could just state that such commercial activity is not expected to occur. This information is not intended to be legally binding, but rather to assist EPA in determining whether the submitter appears to have serious intentions for commercializing the substance in question.

The Agency would also like to make clearer the procedure a submitter intending to import the substance should use to allow a foreign manufacturer or supplier to provide confidential chemical identity information directly to EPA in order to complete a notice when the chemical identity is considered the proprietary information of the foreign party and cannot be disclosed to the submitter. As indicated by the proposed modification to § 720.25(b)(3), it is the importer's responsibility to make all of the contacts and arrangements with the foreign party for the timely transfer of this information to EPA in such a manner that EPA can easily link the information to the importer's notice.

The proposed amendments to § 720.25(b)(3) also indicate chemical identification requirements when submitters of substances to be manufactured or imported cannot possess full knowledge of the chemical identity of the substance to be reported because a purchased reactant or component used in the reported material has a confidential chemical identity that is the proprietary information of the supplier. Only in such a situation involving confidential trademarked or tradenamed reactants or starting materials, due to the complexity and logistical obstacles involved in generating correct CA identifications for substances based on multiple submissions from different sources, does the proposal allow the notice submitter to report directly to EPA all that is known about the substance identity. However, as previously discussed in Unit II of this preamble, the submitter must coordinate with the supplier to ensure that the remaining specific chemical identity information is sent by the supplier directly to EPA in a timely manner, in order to complete the notice and initiate review by EPA.

Further, EPA is proposing language in § 720.25(b)(9) to describe what constitutes an incomplete Bona Fide Notice, and how EPA would handle one. When an incomplete notice is received and identified as such, EPA will immediately return the notice directly to the submitter. The submitter would then have to resubmit the completed notice, in its entirety, in order to have EPA perform the Inventory search and respond to the notice.

3. *"Two percent rule" for polymers.* Under this proposal, the Agency would amend § 720.45(a) of the PMN rule and § § 723.250(f)(2)(iv) and 723.250(o)(1) of the Polymer Exemption rule to allow a manufacturer the option of reporting monomers and other reactants on the basis of (a) the "amount charged" to the reaction vessel, which is the sole method currently allowed, or (b) the amount reacted and incorporated in the manufactured polymer. The proposed changes to § 723.250 are included in another action published elsewhere in this issue of the Federal Register. The current language in this regulation does not specify a basis for determining the percentage of monomer or reactant. However, as discussed earlier in this notice (Unit I.B.3 of this preamble), it has been EPA policy to require the percent (by weight) of a monomer or other reactant to be determined on the basis of the amount charged to the reactor, as a percentage of the dry weight of the manufactured polymer.

Concerning the use of the "incorporated" method, the percentage of chemical incorporation of a given reactant, and its "imputed charge" value, could possibly change if there was a modification in the manufacturing process, such as a change in reaction temperature or the method and/or order of charging reactants, etc. Such changes, which could be inadvertent as well as intentional, could possibly cause the weight percentage of a minor reactant to change from less than or equal to 2 percent to above 2 percent. If this reactant was not originally intended to be included in the polymer identity for TSCA purposes, the processing change could result in the isolation of a different, reportable polymer substance before a section 5 notice was submitted.

EPA emphasizes that a request to correct an initial Inventory reporting form (an Inventory correction request) or a section 5 notice (a PMN correction request) for which the review period has expired will not be accepted for the purpose of adding to the Inventory or to the Agency's PMN substance database, respectively, a new polymer identity that may occur if (1) a processing change causes the "imputed charge" value of a reactant to increase from less than or equal to 2 percent to above 2 percent, when reported percent composition data is based on amounts incorporated, or (2) the submitter changes from the "incorporation" to the "charged" computation method, or vice versa. If a different polymer is isolated under these circumstances that is not already in the Inventory, that polymer is subject to the PMN reporting requirements before it can be manufactured or imported for distribution in commerce.

4. *Multiple photocopies of section 5 submissions.* This proposed amendment to the PMN rule consists of a change in submission criteria at § 720.40(d)(2) that will require submitters to provide EPA

with one original and two copies of section 5 notices, in addition to a sanitized copy in which CBI has been deleted. Submitters would also be required to provide one original and two additional copies of any test data.

5. *Electronic transmission of section 5 notices.* This proposed amendment to the PMN rule at § 720.40(a) is designed to promote the use of electronic media for data submission. EPA is investigating the use of magnetic tape, floppy diskettes and electronic data interchange as means to submit information. In making this proposal, EPA is participating in a nation-wide trend toward reducing reliance on paper for information transfer. EPA has already taken steps in TSCA and other program areas to encourage electronic submission, and wishes to expand this effort to the PMN review program.

Information may be submitted electronically (on magnetic or other media) once EPA publishes a format for electronic submissions. Pilot projects using electronic submissions for the Inventory Update Rule and Toxic Release Inventory Rule will be used as a base line for enhancements to developing a standard Agency-wide format. Such submissions must meet this format and all other media specifications published by EPA. Persons submitting electronically must still complete and submit on paper the Certification and Submitter Identification sections of EPA Form 7710–25; if attachments are submitted, the List of Attachments and all attachments must be submitted on paper.

6. *Mandatory form for Notice of Commencement (NOC).* Under the proposal, all PMN submitters would be required to use a standard one-page form to submit a NOC. In addition, the NOC information requirements at § 720.102(c), have been slightly expanded; however, all information can be provided on the one-page standard form.

The proposal would require every NOC received at EPA on or after the effective date of the final rule amendments to contain the required information on the new standard NOC reporting form. This form would automatically be provided to each PMN submitter as an attachment to EPA's acknowledgement of PMN receipt letter sent to submitters shortly after each PMN is received. Many submitters currently use a similar, voluntary form mailed to them, to report the required information.

The current NOC information reporting requirements include specific chemical identity, PMN number, the date when manufacture or import commences, and substantiation of CBI claims for chemical identity. This CBI substantiation is required by the time a NOC is submitted. Failure to provide written substantiation of a confidentiality claim for the chemical identity with the NOC, as required under 40 CFR 720.85, may result in a waiver of the confidentiality claim and disclosure of the chemical identity to the public.

Some additional information is required under the proposal to make it easier for EPA not only to process NOCs but to verify that submitters are reporting information in NOCs that is consistent with specific PMNs for the substances in question. EPA expects that this additional information would occasionally identify cases in which submitters mistakenly reported the wrong PMN case number in the NOC, or erroneously listed a substance identity that is very different from that which they intended to commence. In addition, the new requirements would enable submitters to provide certain updated information that may no longer be correct or appropriate as reported in the PMN.

In addition to the current NOC reporting requirements, EPA is proposing to amend NOC reporting to require that complete submitter identity information, including the name and address of the submitter, the name and dated signature of the authorized official, and the name and phone number of a technical contact in the United States, be provided on the form.

The amended NOC provisions would also now require a generic chemical name, which could either be the same generic name provided in the PMN, a generic name as revised by the submitter, as long as it masks no more of the chemical identity than the original generic name provided, or an improved or corrected generic name agreed to via negotiation with EPA.

Since one's intention to initially manufacture or import a substance sometimes changes between the time of PMN submission and NOC, the proposal requires submitters to specify in the NOC whether commencement occurred via manufacture or importation and the address of the site(s) under the control of the submitter at which manufacture commenced.

In addition to reasserting a CBI claim for chemical identity, the proposal requests a clear indication of whether the submitter identity is also claimed as confidential. Confidentiality claims can only be asserted by the submitter if the corresponding claims were made in the PMN.

All of the above proposed amendments to information requirements for NOCs involve information that the submitter already would know by the time manufacture or importation of the substance has commenced. Consequently, providing this information in the NOC would not constitute a significant reporting burden. EPA will consider an NOC incomplete if it is not submitted on the new form with all the required information.

III. Alternatives Considered

1. *Correct chemical identity*— a. *Alternative 1.* One alternative proposal being considered by EPA consists of requiring all submitters of section 5 notices and Bona Fide notices to obtain the correct chemical identity information directly from the Chemical Abstracts Service (CAS) using Method 1 as discussed in Unit II of this preamble.

EPA is considering this alternative proposal because the Agency believes that too much incorrect and incomplete chemical identity information may continue to be submitted in notices under the Agency's preferred proposal which allows a submitter to use other sources for chemical identity information (Method 1 or Method 2). The Agency believes that the level of EPA resource savings expected from mandatory use of the special extension of CAS Registry Services, which would require only minimal Agency screening and review of chemical identities in notices, cannot be achieved if submitters do not obtain substance identifications directly from CAS. Although EPA expects that most submitters will use CAS Registry Services for the reasons stated in Unit II of this preamble, the Agency realizes that in cases where submitters use alternative sources, EPA staff would have to invest significant resources to screen the quality of information. Further, the Agency would like to minimize the administrative burdens involved with notice suspensions, delays, submitter contact, and additional paperwork needed to properly amend notices that may be determined to be incomplete on the basis of incorrect chemical identity.

b. *Alternative 2.* This alternative is the same as EPA's preferred approach, allowing the use of Method 1 or Method 2 to obtain correct chemical identity information, except that submitters would have to obtain and report CASRNs for all substance identities that they do not claim as CBI, in addition to reporting CASRNs for all substances to which CASRNs have already been assigned.

Although having more substances reported with CASRNs under this alternative would save some EPA resources involved with chemical review and Inventory searching, the Agency recognizes that this approach could inadvertently discourage submitters from reporting substances without CBI claims for chemical identity as often as they should. Since EPA encourages and expects submitters to use CBI claims only when necessary, the Agency does not favor the use of this approach.

2. *"Two Percent Rule" for polymers—a. Alternative 1.* Retain the current "two percent rule" based on the weight of monomer or other reactants "charged" to the reactor.

EPA considered this alternative because it is much easier to calculate the weight of monomer or reactant "charged" to the reactor instead of analytically determining the actual composition of the polymer. The typical percentages of monomers or other reactants "as charged" could be directly calculated from batch records, and these calculations could be routinely made, if necessary, by people who do not have scientific training. The simplicity of this type of calculation also reduces the burden of chemical identity review for the Agency.

In addition, EPA and industry have been using this method of calculation and Inventory listing for 13 years. Consequently, Inventory consistency would be enhanced concerning what polymer listings actually represent.

This method also provides less chance of error, which would prevent significant increases in EPA's enforcement/compliance monitoring burden and liability to industry. By using the percent incorporated method, submitters could inadvertently fail to comply with section 5 of TSCA due to some processing change (other than the amounts of charged reactants) varying the incorporated percentages. For example, if the percent of a certain monomer incorporated in the polymer was determined to be just slightly under 2 percent, the monomer's percent incorporation could possibly increase above 2 percent due to some processing change, such as a modest variation in reaction temperature. If the submitter had reported that this monomer was not to be included in the chemical identity of the polymer, he/she would be in violation of the PMN Rule whenever the percent incorporation of that monomer exceeded 2 percent, if the new chemical identity including that monomer is not already in the Inventory. Such a technical violation of TSCA would not be easy to prevent or detect.

The Agency also believes that this method correlates reasonably well with the percent incorporation of most monomers.

However, the Agency is aware that the current method of reporting polymers provides industry with less flexibility and innovation capabilities since it may require PMN reporting for even minor changes in manufacturing processes. There may be relatively poor correlation between the percent charged versus incorporation, particularly for non-monomer reactants. Bases, acids, or other reactants are often charged at much more than stoichiometric amounts in order to achieve a certain pH, to drive the reaction to completion, or to generate more polymer chains with lower molecular weight, etc. Finally, EPA believed that it should take industry's request for revision of the "Two Percent Rule" under consideration, in line with the advances in analytical techniques for determining percent "incorporated", the desire to "harmonize" to the extent reasonable the Agency's polymer reporting requirements with other international reporting requirements, and the Agency's belief that allowing percent "incorporation" more accurately reflects the physical, chemical, and toxicological properties of polymers.

b. *Alternative 2.* Change to a 5 percent rule based on the amount charged.

EPA considered this option because it accommodates most typical use levels of reactants such as free radical initiators, chain transfer agents, salt forming reactants, etc. It would also allow industry more flexibility to modify existing polymers without submitting PMNs, thereby, significantly reducing EPA's reviewing burden. Historically, industry originally requested this level during the development of the Inventory reporting regulations.

EPA believes that this option would require that the Agency review the toxicological implications resulting from this alternative since the potential for chemically modifying polymer structures is increased somewhat when a monomer or reactant is increased from 2 to 5 percent, causing a larger potential variation in physical and chemical properties. Further, this method may allow monomers with reactant functional groups at levels that currently concern the Agency, e.g., cationic polymers. This method would not correlate chemical identity with percent incorporation as well as the EPA proposed amendment. Finally, this approach would not be consistent with the Agency's goal of harmonizing to the extent possible EPA's method of reporting polymers with other international reporting practices.

EPA requests comments on these alternatives, in particular, on the difficulty of obtaining accurate, reliable data using the percent "incorporated" method and the percentage of polymer submissions in which this method would be used.

IV. Economic Analysis

EPA has evaluated the potential costs of the proposed amendments for potential submitters of section 5 notices. The Agency's complete economic analysis is available in the public record for this rule (OPPTS–50593).

The regulatory impact analysis estimates the costs and benefits attributable to the proposed regulation. In this case, the analysis also contains estimates for the three additional proposed amendments to section 5 regulations that are published elsewhere in this **Federal Register**. These proposals would amend the Polymer Exemption Rule, the Low Volume Exemption Rule, and the Expedited Follow-up Rule. As these proposed regulations are amendments to current regulations, the costs and benefits are incremental, estimating the effect of the proposal with respect to the current regulation.

The costs and benefits associated with this proposed amendment are partially quantified; many of the benefits are unquantified but are considered to be of significant importance. Considering only the quantified costs and benefits, there is a slight cost increase for industry and a slight cost savings for government. Assuming either 1,000, 2,000, or 3,000 annual section 5 submissions, the savings as compared to the current regulation are estimated to be:

Annual Number of Submisssions	Annual Cost Savings ($ Million)	
	Industry	Government
1,000	(-0.1)	0.1
2,000	(-0.3)	0.2
3,000	(-0.4)	0.2–0.3

The aspects of the proposed amendment that have the greatest quantified cost impact on industry are the change in requirements for a bona fide TSCA Inventory search request and the requirement to provide correct chemical identification. Both requirements are expected to enable the Agency to more effectively utilize resources, thereby providing better service to industry. One of the major unquantified benefits of this proposal is the flexibility allowed industry by the changes to the "Two Percent Rule,"

which allows industry to make minor compositional changes, providing more manufacturing control to the submitter and possibly reducing the number of section 5 submissions. Another unquantified change is the requirement to use a standardized form for notice of commencements (NOCs), the impact of which is expected to be minimal as most submitters are already using the form.

V. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50593). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. A public version of the record without any confidential information is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

VI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the Polymer Exemption notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et. seq. and have been assigned OMB control number 2070–0012.

The public reporting burden for this collection of information is estimated to vary from 18 to 21 hours per response, with an average of 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 720

Chemicals, Environmental protection, Premanufacture notification, Hazardous materials, Recordkeeping and reporting requirements.

Dated: January 19, 1993.

William K. Reilly,

Administrator.

Therefore, 40 CFR chapter I, subchapter R, part 720 is proposed to be amended as follows:

PART 720 — [AMENDED]

1. The authority citation for part 720 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2613.

2. Section 720.25 is amended by revising paragraphs (a), (b)(1), (2)(i), (2)(iii), (2)(iv), (2)(v), (3), and by adding paragraphs (b)(2)(vi), (2)(vii), (2)(viii), and (b)(9) to read as follows:

§ 720.25 Determining whether a chemical substance is on the Inventory.

(a) A new chemical substance is any chemical substance that is not currently listed on the TSCA Chemical Substance Inventory.

(b)(1) A chemical substance is listed in the publicly accessible Inventory by a specific chemical name (either a Chemical Abstracts (CA) Index Name or a CA Preferred Name) and a Chemical Abstracts Service (CAS) Registry Number if its identity is not confidential information. A confidential chemical substance, on the other hand, is listed in the public Inventory by a TSCA Accession Number and a generic chemical name that masks the specific substance identity. The confidential substance is listed by its specific chemical name only in the confidential portion of the Inventory. A person who intends to manufacture or import a chemical substance not listed by specific chemical name in the publicly available Inventory may ask EPA whether the substance is included in the confidential Inventory. EPA will answer such an inquiry only if EPA determines that the person has a bona fide intent to manufacture or import the chemical substance for commercial purposes.

(2) * * *

(i) The specific chemical identity of the substance that the person intends to manufacture or import, using the most current, correct Chemical Abstracts (CA) name and the other correct chemical identity information stipulated in § 720.45(a).

* * * * *

(iii)(A) A brief description of the research and development activities conducted to date, including the year in which the person first started to conduct research or development activity on this substance, and the general types of research and development activities conducted thus far (e.g. synthesis, substance isolation/purification, formulating, product development, process development, end-use application, toxicity testing, etc.). The person must also indicate whether any pilot plant or production-scale plant evaluations have been conducted involving the manufacture or processing of this substance.

(B) If an importer is unable to provide the information requested in paragraph (b)(2)(iii)(A) of this section from the foreign manufacturer or supplier, the following information may be submitted:

(*1*) A brief statement indicating how long the substance has been in commercial use outside of the United States,

(*2*) The name of a country in which it has been commercially used,

(*3*) Whether or not the submitter believes that the substance has already been used commercially, in any country, for the same purpose or application that the submitter is intending.

(iv) A specific description of the major intended application or use of the substance.

(v) An infrared spectrum of the substance, or alternative spectra or other data which identifies the substance if infrared analysis is not suitable for the substance or does not yield a reasonable amount of structural information. When using alternative spectra or instrumental analysis, submit a spectrum or instrumental readout verifying use of that method.

(vi) The estimated date (month/year) in which the person intends to submit

a Premanufacture Notice (PMN) for this substance if EPA informs the notice submitter that the substance is not on the Inventory.

(vii) The address of the facility under the control of the submitter at which the manufacture or processing of the substance would most likely occur.

(viii)(A) For substances intended to be manufactured in the United States, a description of the most probable manufacturing process that would be used by the submitter to produce the substance for non-exempt commercial purposes.

(B) For substances intended to be imported, a brief description of how the submitter is most likely to process or use the substance for a commercial purpose. If the importer does not expect to process or use the substance at any facility under his control, a statement to this effect should be included along with a description of how the substance will be processed or used at sites controlled by others, if this information is known or reasonably ascertainable.

(3)(i) If an importer cannot provide all the information required by paragraph (b)(2) of this section because it is claimed confidential by its foreign manufacturer or supplier, the foreign manufacturer or supplier may supply the required information directly to EPA and reference the importer's notice. If the appropriate supporting document from the foreign party is not received within 30 days after EPA receives the submitter's notice, the notice will be considered incomplete.

(ii) If a submitter cannot provide all of the required information as stipulated in § 720.45(a) because the new chemical substance is manufactured using a reactant that has a specific chemical identity claimed as confidential by its supplier, the notice must contain chemical identity information that is as complete as can be known by the submitter. In addition, a letter of support for the notice must then be sent to EPA by the chemical supplier of the confidential reactant, providing the specific chemical identity of this proprietary reactant. The letter of support must reference the submitter's notice, including the PMN User Fee Identification Number chosen by the submitter for this notice, if applicable. If the appropriate supporting document from the supplier is not received within 30 days after EPA receives the submitter's notice, the notice will be considered incomplete.

* * * * *

(9) If the required chemical identity information has not been reported correctly or completely in the notice (except as provided under paragraph (b)(3)(ii) of this section) or if any other required data or information has been omitted or is incomplete, EPA will consider the whole notice to be incomplete. As soon as an incomplete notice is identified as such by EPA, the Agency will immediately return the notice directly to the submitter. The submitter must then resubmit the whole, completed Bona Fide Notice to EPA in order to have the Agency perform the desired Inventory search and respond to the notice.

* * * * *

3. Section 720.40 is amended by revising paragraphs (a) and (d) to read as follows:

§ 720.40 General.

(a) *Use of the notice form; electronic submissions.* (1) Each person who is required by subpart B of this part to submit a notice must complete, sign, and submit a notice containing the information in the form and manner specified in this paragraph. The information submitted and all attachments (unless the attachment appears in the open scientific literature) must be in English. All information submitted must be true and correct.

(2) Information may be submitted on paper, or electronically, as follows:

(i) Information submitted on paper must be submitted in the form and manner set forth in EPA Form No. 7710–25, which is available from the Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Information which is not submitted on a photocopy of the form (e.g., on a form created by commercial form-making software) must be in a format pre-approved by the Agency.

(ii) Information may be submitted electronically (on magnetic or other media) if and when EPA has published a format for electronic submissions. Such submissions must meet this format and all other media specifications published by EPA. Persons submitting electronically must still complete and submit on paper the Certification and Submitter Identification sections of Form 7710–25; if attachments are submitted, the List of Attachments and all attachments must be submitted on paper.

* * * * *

(d) *General notice requirements.* (1) Each person who submits a notice must provide the information described in § 720.45 and specified on the notice form, to the extent such information is known to or reasonably ascertainable by the submitter. In accordance with § 720.50, the notice must also include any test data in the submitter's possession or control, and descriptions of other data which are known to or reasonably ascertainable by the submitter and which concern the health and environmental effects of the new chemical substance.

(2) A person who submits a notice to EPA under this part must provide to EPA an original notice and two copies of the notice itself and two additional copies of all test data and any optional information attached to the notice form.

4. Section 720.45 is amended by revising paragraph (a) to read as follows:

§ 720.45 Information that must be included in the notice form.

* * * * *

(a)(1) The specific chemical identity of the substance that the person intends to manufacture or import, which includes the following:

(i) The currently correct Chemical Abstracts (CA) name for the substance, based on the 9th Collective Index (9CI) of CA nomenclature conventions, and consistent with listings for similar substances in the TSCA Chemical Substance Inventory (the Inventory). For each substance having a chemical composition that can be represented by a specific, complete chemical structure diagram (a Class 1 substance), a CA Index Name must be provided. For each chemical substance that cannot be fully represented by a complete, specific chemical structure diagram (a Class 2 substance), or if the substance is a polymer, a CA Index Name or CA Preferred Name must be provided (whichever is appropriate based on Chemical Abstracts Service (CAS) 9CI nomenclature rules and conventions),

(ii) The currently correct CAS Registry Number (CASRN) for the substance if a CASRN already exists for the substance in the CAS Registry File,

(iii) The correct molecular formula, for each Class 1 substance and any Class 2 substance for which a definite molecular formula is known or reasonably ascertainable,

(iv) A complete, correct chemical structure diagram for each Class 1 substance; a correct partial chemical structure diagram for a Class 2 substance or polymer, as complete as can be known, if one can be reasonably ascertained.

(2) For polymers, the submitter must also report the following:

(i) The specific chemical name and CAS Registry Number (if available) of each monomer and other reactant used, at any weight percent, to manufacture the polymer. Tradenames or generic

names of chemical reactants or monomers are not acceptable as substitutes for specific chemical names.

(ii) The typical percent of each monomer and other reactant in the polymer (by weight percent of total polymer), and the maximum residual amount of each monomer present in the polymer.

(iii) The reactants used at 2 weight percent or less (based on the dry weight of the polymer manufactured) that should be included as part of the polymer description on the Inventory, where the weight percent is based on either (A) the weight of reactant charged to the reaction vessel, or (B) the weight of chemically combined (incorporated) reactant in the polymer.

(iv) The submitter must specify which method of computation is used; that is, whether the calculation is based on the weight of reactants "as charged" or "as incorporated." If the submitter specifies on the basis of incorporated weights of reactants in the polymer, analytical data to support this determination must be maintained at the site of manufacture. The "percent (by weight)" of a monomer or other reactant is the weight of the reactant expressed as a percentage of the weight of the polymeric chemical substance manufactured. If the submitter uses the "as charged" method of computation, the weight of a reactant consists of its full amount charged to the reaction vessel. If the optional "incorporated" method of reporting is used, the weight of a reactant is the minimum weight of that reactant required by theory to account for the actual weight of reactant or reactant unit chemically incorporated into the polymeric substance manufactured.

(v) Measured or estimated values of the minimum number-average molecular weight of the polymer and the amount of low molecular weight species below 500 and below 1,000 molecular weight, with a description of how the measured or estimated values were obtained.

(3) Submitters must use one of the following two methods to develop or obtain the specified chemical identity information and identify the method used in the notice:

(i) *Method 1.* Using this method, the submitter would obtain the correct chemical identity information required by § 720.45(a)(1) directly from CAS prior to submitting a notice to EPA.

(ii) *Method 2.* A submitter using this method can obtain the correct chemical identity information required by § 720.45(a)(1) from any source, as long as the information is consistent with Inventory listings for similar substances. This section of the notice will be incomplete according to § 720.65(c)(1)(vi) if the submitter uses Method 2 and any chemical identity information is considered incorrect by EPA.

(4) If an importer submitting the notice cannot provide all the information stipulated at § 720.45(a) because it is claimed as confidential by the foreign manufacturer or supplier of the substance, the importer must have the foreign supplier follow the procedures at § 720.45(a)(3) and provide the correct chemical identity information stipulated in § 720.45(a) directly to EPA in a joint submission or as a letter of support to the notice, which clearly references the importer's notice and PMN User Fee Identification Number. The statutory review process will start upon receipt of complete, correct information from the foreign party.

(5) If a manufacturer cannot provide all the information stipulated in § 720.45(a) because the new chemical substance is manufactured using a reactant having a specific chemical identity claimed as confidential by its supplier, the manufacturer must submit a notice directly to EPA containing all the information known by the manufacturer about the chemical identity. In addition, the supplier of any confidential reactant must submit a letter of support directly to EPA providing the specific chemical identity of the confidential reactant. The letter of support must reference the notice submitter's name and PMN User Fee Identification Number. The statutory review period will commence upon receipt of both the notice and letter of support.

5. Section 720.80 is amended by revising paragraph (b)(2) to read as follows:

§ 720.80 General provisions.

* * * * *

(b) * * *

(2) If any information is claimed as confidential, the person must submit two copies of each notice form (or electronic submission) and any attachments.

(i) One copy of the form (or electronic submission) and attachments must be complete. In that copy, the submitter must designate that information which is claimed as confidential in the manner prescribed on the notice form (or in EPA's electronic submission instructions).

(ii) The second copy must be complete except that all information claimed as confidential in the first copy must be deleted. EPA will place the second copy in the public file. Once this copy has been in the public file for more than 30 days, any information contained within the copy will be presumed to be in the public domain.

(iii) If the submitter does not provide the second copy, or information in a health and safety study (except data claimed as confidential in accordance with § 720.90(b)) is deleted from the second copy, the submission will be deemed incomplete and the notice review period will not begin until EPA receives the second copy or the health and safety study information is included, in accordance with § 720.65(c)(1)(vi).

* * * * *

6. Section 720.102 is amended by revising paragraphs (c) to read as follows:

§ 720.102 Notice of commencement of manufacture or import.

* * * * *

(c) *Information to be reported on form.* (1) The notice must be submitted on EPA (Form 7710——) (Form number to be assigned), which is available from the Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The form must be signed and dated by the submitting person or authorized official. All information specified on the form must be provided. The notice must contain the following information:

(i) The specific chemical identity.

(ii) A generic chemical name (if the chemical identity is claimed as confidential by the submitter).

(iii) The premanufacture notice (PMN) number.

(iv) The date when the submitter commenced manufacture or import for a commercial purpose (indicating whether the substance was initially manufactured in the United States or imported).

(v) The name and address of the submitter.

(vi) The name of the authorized official.

(vii) The name and phone number of a technical contact in the United States.

(viii) The address of the site(s) under the control of the submitter where commencement of manufacture occurred.

(ix) Clear indications of whether or not the chemical identity and/or the name of the submitter is presently claimed as confidential by the submitter.

(2) If the submitter claims the chemical identity confidential, and wants the identity to be listed on the confidential Inventory, the claim must

be reasserted and substantiated in accordance with § 720.85(b). Otherwise, EPA will list the specific chemical identity on the public Inventory. Submitters who did not claim the chemical identity or submitter identity to be confidential in the PMN cannot claim either of these identities as confidential in the Notice of Commencement.

[FR Doc. 93-2774 Filed 2-5-93; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 721

[OPPTS-50595; FRL3890-3]

RIN 2070-AC14

Toxic Substances; Significant New Use Rules; Proposed Amendment to Expedited Process for Issuing Significant New Use Rules; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 5(a)(2) of the Toxic Substances Control Act (TSCA), EPA is proposing an amendment to the notification requirements for selected new chemicals (40 CFR 721.170(c)(1)) that would authorize EPA to impose any of the provisions in 40 CFR part 721 subpart B and other provisions not included in subpart B using expedited rulemaking procedures to promulgate "significant new use" rules (SNURs) for substances not subject to section 5(e) Orders. Currently, the notification requirements in § 721.170(c)(1) limit the type of activities which EPA can designate as a significant new use by expedited rulemaking without first issuing a section 5(e) Order. This proposed amendment would allow EPA to promulgate expedited SNURs for certain substances without issuing a section 5(e) Order for the substance, and thereby facilitate EPA's ability to efficiently and expeditiously regulate new chemical substances.

DATES: Comments must be received by April 9, 1993. If requested, EPA will conduct public hearings on the proposed rule amendments. Requests to make an oral presentation must be received by April 9, 1993.

ADDRESSES: All comments and requests to speak at the public hearing must be sent to: TSCA Document Control Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (Phone: 202-260-1532).

Comments should include the docket control number. The docket control number for this amendment is OPPTS-50594. Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate (with additional sanitized copies if CBI is involved). Comments on this proposed rule will be placed in the rulemaking record and will be available in the TSCA Public Docket Office, Rm. NE-G-004 at the above address between 8 a.m. and 12 noon and 1 p.m. and 4 p.m., Monday through Friday, excluding public holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document, along with three other related documents, OPPTS-50593, 50594, and 50596, is available as an electronic file on *The Federal Bulletin Board* at 9:00 a.m. on the date of publcation in the **Federal Register**. By modem dial (202) 512-1387 or call (202) 512-1530 for disks or paper copies. This document and the three related documents are available in Postscript, Wordperfect and ASCII.

SNURs require persons to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities designated by the SNUR as a significant new use. The supporting rationale and background for SNURs are more fully set out in the preamble to EPA's first SNURs issued under the Expedited Follow-Up Rule and published at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). The enumerated factors pertain to the potential for increased manufacturing and processing volume, increased exposure, and anticipated methods of manufacture, processing, distribution and disposal. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to SNURs, recordkeeping requirements, exemptions to reporting requirements, and applicability of SNURs to uses occurring before the effective date of a SNUR. Rules on user fees appear at 40 CFR part 700. Persons subject to a SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(d)(1) and 5(b), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

III. Discussion of Proposed Amendment

A. Section 5 of TSCA

Section 5(a)(1) of TSCA requires submission of written notice to EPA at least 90 days before commencement of commercial manufacture or import of a "new chemical substance" (which is a substance not listed on the TSCA Chemical Substance Inventory maintained pursuant to section 8(b)) and before manufacture or processing of any chemical substance for an activity which EPA determines, by rule, constitutes a "significant new use." Upon receipt of such a premanufacture notice (PMN) or significant new use notice (SNUN), if EPA determines that there is insufficient information to evaluate the human health and environmental effects of the substance, and that the substance may present an unreasonable risk of injury to health or the environment, or that the substance will be produced in substantial quantities and may be anticipated to

enter the environment in substantial quantities or there may be significant or substantial human exposure, then EPA may issue an Order under section 5(e) of TSCA to prohibit or limit activities associated with the substance.

After a company commences commercial manufacture or import of a PMN substance and submits a notice of commencement (NOC) of manufacture within 30 days as required by 40 CFR 720.102, EPA adds the substance to the TSCA section 8(b) Inventory. The substance is then no longer a "new chemical substance," as defined by section 3(a) of TSCA, the manufacture of which would require submission of a PMN. The requirements of a section 5(e) Order apply only to the company who submitted the notice, whereas a SNUR applies to all manufacturers and processors of the substance. Consequently, once a substance subject to a section 5(e) Order is listed on the TSCA section 8(b) Inventory, any other company may manufacture the substance without being required to notify EPA or comply with any other restrictions under section 5 of TSCA, unless EPA promulgates a SNUR pursuant to section 5(a)(2) of TSCA.

Therefore, EPA has adopted a policy that when the Agency has raised concerns for a substance and has regulated that substance under a section 5(e) Consent Order, EPA develops a SNUR concurrently with the Consent Order. The SNUR defines a significant new use so as to require reporting to EPA before a manufacturer (including importers) or processor undertakes activities inconsistent with provisions of the Consent Order. In this manner, the Agency will have an opportunity to review those activities before they occur because, under section 5(a)(1)(B) of TSCA, any company wishing to undertake the activities designated in the SNUR must submit a SNUN to EPA at least 90 days before doing so. Ordinary "notice and comment" rulemaking procedures to develop a SNUR require more time than development of a Consent Order. However, the Agency can promulgate SNURs using the expedited procedures for SNUR development at 40 CFR 721.160 or 721.170 (54 FR 31298, July 27, 1989). Using these expedited procedures, EPA can generally promulgate a SNUR within a time frame similar to that necessary to issue a section 5(e) Order.

B. Expansion of Activities Available for Designation as Significant New Uses in Expedited Non-5(e) SNURs

EPA's ability to promulgate SNURs efficiently and expeditiously has been facilitated by EPA's New Chemical Follow-up Rule (also known as the "Generic SNUR"), published on July 27, 1989 (54 FR 31298; 40 CFR 721.50 – 721.185). The Generic SNUR established a generic list of standard significant new use designations and established that EPA would generally promulgate substance-specific SNURs using expedited rulemaking procedures instead of the standard "notice and comment" rulemaking. (See also the proposed rule at 52 FR 15594, April 29, 1987.) This rule was designed to, among other things, reduce the time between EPA's completion of the PMN review and promulgation of a SNUR.

EPA is exploring additional ways to speed Agency action on new chemical substances and conserve Agency resources in the TSCA section 5 program. Among these proposed activities is this amendment to expand the types of expedited SNURs for new chemical substances that EPA may promulgate directly without first issuing section 5(e) Orders (hereafter referred to as "non–5(e) SNURs") under 40 CFR 721.170. Whereas a section 5(e) Order applies only to the original PMN submitter who signs the Order, a SNUR applies to all manufacturers and processors of the chemical substance. The reporting requirements of a non–5(e) SNUR apply also to the original PMN submitter (because, without a section 5(e) Order, the PMN submitter is not exempted by 40 CFR 721.45(i)). Since only one Agency action is required instead of two, and fewer EPA resources are necessary to obtain similar regulatory results, a non–5(e) SNUR is more efficient than a combination of section 5(e) Order and "5(e)-SNUR" (under 40 CFR 721.160) to regulate new chemical substances.

A non–5(e) SNUR is typically appropriate for PMNs on chemical substances expected to be toxic but where the PMN indicates the submitter's intention to limit activities, implement control measures, or otherwise adequately mitigate human exposures and environmental releases. Activities described in such PMNs may not present an unreasonable risk of injury to human health or the environment so as to warrant the issuance of an Order under section 5(e) of TSCA, but deviations from the described activities may present an unreasonable risk warranting the imposition of regulatory controls via a section 5(e) Order. In those cases, a non–5(e) SNUR may be the least burdensome regulatory alternative for the Agency to pursue, as it will allow the PMN submitter to proceed with planned activities while requiring notification to, and review by, EPA for activities which have not been reviewed.

Based on experience gained from issuing over 200 SNURs under expedited follow-up procedures, EPA is proposing an amendment to 40 CFR 721.170(c)(1) that would authorize EPA to designate any of the provisions in 40 CFR part 721 subpart B using expedited rulemaking procedures to promulgate non–5(e) SNURs. EPA may currently use the more time-consuming notice and comment rulemaking to promulgate non–5(e) SNURs containing any of the significant new use designations in subpart B. However, section 721.170(c) currently limits the types of activities in subpart B which EPA can designate as a significant new use by expedited rulemaking without first issuing a section 5(e) Order. Significant new use designations available for expedited non–5(e) SNURs are currently limited to environmental release activities and certain industrial, commercial, or consumer activities. However, other important designations, such as protection in the workplace and hazard communication, currently may not be promulgated in non–5(e) SNURs via expedited rulemaking procedures. The absence of hazard communication provisions in current expedited non–5(e) SNURs may result in failure to inform persons handling substances of their potential risks and proper precautionary measures to protect against such risks. Furthermore, a large percentage of the new chemical substances that EPA regulates under section 5(e) are regulated to control workplace exposures. However, worker protection activities currently may not be designated as significant new uses in expedited non–5(e) SNURs. EPA should be able to select from all the possible designations in subpart B, in order to respond appropriately to the unique characteristics of the various new chemical substances which EPA reviews under section 5 of TSCA.

EPA already has the authority to designate hazard communication and worker protection provisions either by promulgating SNURs using notice and comment rulemaking procedures or by issuing a section 5(e) Order and promulgating an expedited "5(e)SNUR." However, this proposed amendment would enable EPA to designate hazard communication and worker protection provisions by promulgating SNURs using expedited rulemaking procedures and without issuing a section 5(e) Order.

In addition, this proposed amendment would authorize EPA to promulgate expedited non–5(e) SNURs with

provisions not currently listed in subpart B. Occasionally, EPA has promulgated expedited 5(e)–SNURs containing provisions not in subpart B when necessary to match the terms of the section 5(e) Order. An example of a non-subpart B provision that EPA sometimes includes in a chemical-specific expedited SNUR is a provision that allows a specified amount of removal credit for a specified waste-water treatment technology, since the standard provision at 40 CFR 721.91(a)(4) does not account for waste-water treatment removal.

Similarly, EPA may occasionally use expedited procedures to promulgate non–5(e) SNURs containing provisions not included in subpart B when the provision is necessary to match the information contained in the PMN. EPA uses expedited rulemaking to promulgate SNURs with a non-subpart B provision only when the provision represents a relatively minor deviation from the standard provisions in subpart B such that EPA does not anticipate a high likelihood of public interest in commenting on the provision. See 54 FR 31305, July 27, 1989. Nevertheless, as discussed below, the expedited procedures still provide interested parties an opportunity to comment on the SNUR.

C. Opportunity for Comment

The expedited rulemaking procedure for the Generic SNUR is based on EPA's experience which has demonstrated that very few comments on SNURs are submitted. (See, e.g., 52 FR 15596, April 29, 1987; 54 FR 31299, July 27, 1989.) However, the process EPA is proposing here is not intended to limit opportunity for public comment.

The current limitations in 40 CFR 721.170(c)(1) were contained in the original proposal of the Generic SNUR (52 FR 15596, April 29, 1987). As originally proposed, the Generic SNUR provided for immediately effective final SNURs. However, the final version of the Generic SNUR, as described below, "significantly changes the proposed approach to provide a greater opportunity for public comment" (54 FR 31299, July 27, 1989). EPA now believes that, given the expanded comment opportunity in the final Generic SNUR, the subpart B provisions available for expedited non-5(e) SNURs should be expanded.

Pursuant to the final Generic SNUR, EPA generally uses "direct final" rulemaking to promulgate follow-up SNURs on new chemical substances. Under direct final rulemaking procedures, EPA publishes the rule in the final rule section of the **Federal Register** and the SNUR automatically becomes effective 60 days from publication unless, within 30 days after publication, EPA receives written notice that someone wishes to submit adverse or critical comments. If EPA receives such a notice, EPA will withdraw the final SNUR and propose the rule in the proposed rule section of the **Federal Register**, establishing a 30–day comment period. This procedure allows opportunity for public comment before a SNUR becomes effective, without unnecessarily delaying the rulemaking if no comments are likely to be submitted.

Furthermore, according to the current § 721.170(d)(2), at least 7 days before expiration of the PMN review period, EPA must notify the PMN submitter of the Agency's human health or environmental concerns and the activities under consideration for designation as a significant new use. This procedure provides ample notice to the person most likely to have an interest in providing comment (the PMN submitter). Thus, the expanded non–5(e) SNUR process proposed herein will still provide notice and opportunity for comment to all persons through the **Federal Register** and individual notice to the PMN submitter before the SNUR is published.

D. Timing of Section 5 Regulation

Generally, when a PMN substance is targeted for regulation under a section 5(e) Order, the statutory 90–day review period must be suspended to allow sufficient time for Order development, review, and approval. In such cases, the PMN submiter may not commence production of the substance until the Order has been executed and all suspensions of the review period have expired. This process normally takes 3 to 6 months. In contrast, a PMN substance targeted for regulation under a non-5(e) SNUR does not generally require suspension of the review period beyond the initial 90 days because the specific use identified in the PMN does not present an unreasonable risk; rather, it is other potential uses of the PMN substance for which the Agency has concerns and for which the non-5(e) is developed. Consequently, PMN submitters of non-5(e) regulated substances may generally begin commercial production on the 91st day after submission of the PMN.

IV. Economic Analysis

The Agency's complete economic analysis is available in the public record for this rulemaking (OPPTS–50595). The regulatory impact analysis estimates the costs and benefits attributable to the proposed regulation. In this case, the analysis also contains estimates for the three additional proposed amendments to section 5 regulations that are published elsewhere in this **Federal Register**. These proposals would amend the PMN rule, the Low Volume Exemption Rule, and the Polymer Exemption Rule. As these proposed regulations are amendments to current regulations, the costs and benefits are incremental, estimating the effect of the proposal with respect to the current regulation.

This non–5(e) SNUR amendment would eliminate the need to develop a section 5(e) Consent Order in those cases where EPA determines that activities described in the PMN submission will not present unreasonable risk. The major industry benefit is the avoidance of the delay and costs associated with negotiating a Consent Order; generally, the submitter will be able to commence commercial manufacture immediately after the PMN review period. The submitter, along with other manufacturers and processors, will be bound by the expedited SNUR.

Industry savings from this amendment due to the avoidance of Consent Orders have not been quantified. Annual government savings are estimated to range from $240,000 to $960,000, depending on the number of submissions (range used was 1,000 to 3,000 annually).

V. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50595). The record includes basic information considered by the Agency in developing this proposed rule. A public version of the record without any confidential information is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

VI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA

estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et seq., and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to 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 Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: January 19, 1993.

William K. Reilly,
Administrator

Therefore, 40 CFR Chapter I, part 721 is proposed to be amended as follows:

PART 721 — [AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By revising § 721.170(c)(1) to read as follows:

§ 721.170 Notification requirements for selected new chemical substances that have completed premanufacture review.

* * * * *

(c) * * * (1) When EPA decides to establish significant new use reporting requirements under this section, EPA may designate as a significant new use any one or more of the activities set forth in subpart B of this part, as well as activities not listed in subpart B of this part. In addition, EPA may designate specific recordkeeping requirements described under subpart C of this part that are applicable to the substance.

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[FR Doc. 93-2775 Filed 2-5-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 723

[OPPTS-50594 ;FRL-3890-1]

RIN 2070-AC14

Premanufacture Notification Exemptions; Revisions of Exemptions for Polymers; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires that persons notify EPA at least 90 days before they manufacture or import a new chemical substance for commercial purposes. Section 5(h)(4) of TSCA authorizes EPA, upon application and by rule, to exempt the manufacturer or importer of any new chemical substance from part or all of the provisions of section 5 if the Agency determines that the manufacture, processing, distribution, use, or disposal of the new chemical substance will not present an unreasonable risk of injury to human health or the environment. This proposed rule would amend the polymer exemption rule at 40 CFR 723.250 to expand the criteria for eligible polymers, reduce the information requirements, and change the timing of reporting. These proposed amendments reflect criteria developed and used by EPA to assess the hazards associated with new polymeric substances. EPA has included procedural safeguards and other conditions in the proposed exemption to ensure that these polymers will not present an unreasonable risk.

DATES: Comments must be received by April 9, 1993. If requested, EPA will conduct public hearings on the proposed rule amendments. Requests to make an oral presentation must be received by April 9, 1993.

ADDRESSES: All comments and requests to speak at the public hearing must be sent to: TSCA Document Control Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (Phone: 202-260-1532).

Comments should include the docket control number. The docket control number for this amendment is OPPTS-50594. Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate (with additional sanitized copies if CBI is involved). Comments on this proposed rule will be placed in the rulemaking record and will be available in the TSCA Public Docket Office, Rm. NE-G-004 at the above address between 8 a.m. and 12 noon and 1 p.m. and 4 p.m., Monday through Friday, excluding public holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document, along with three other related documents, OPPTS-50593, 50595, and 50596 is available as an electronic file on *The Federal Bulletin Board* at 9:00 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512-1387 or call (202) 512-1530 for disks or paper copies. This document and the three related documents are available in Postscript, Wordperfect, and ASCII.

The polymer exemption rule was originally promulgated on November 21, 1984. The supporting rationale and background for that exemption was published at 49 FR 46066 on November 21, 1984 and 46 FR 54688 on November 3, 1981. Consult those documents for further information on the objectives, rationale, and procedures for the rule and the basis for the finding that polymers eligible for exemption will not present an unreasonable risk.

I. Background

A. Statutory Authority

Section 5(a)(1) of TSCA requires that persons notify EPA at least 90 days before they manufacture or import a new chemical substance for commercial purposes. A new chemical substance is any substance that is not on the inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(h)(4) of TSCA authorizes EPA, upon application and by rule, to exempt the manufacturer or importer of any new chemical substance from part or all of the provisions of section 5 if the Agency determines that the manufacture, processing, distribution, use, or disposal of the new chemical substance will not present an unreasonable risk of injury to human health or the environment.

B. History

In 1984, the Agency published a TSCA section 5(h)(4) rule granting an exemption for persons who manufacture or import certain polymers, set out at 40 CFR 723.250. This rule was developed in response to petitions by chemical industry groups. Notice of receipt of the petitions from industry groups was published at 46 FR 54688 on November 3, 1981. The proposed exemption rule was published at 47 FR 33924 on August 4, 1982 and the final exemption rule was published at 49 FR 46066 on November 21, 1984.

Since promulgation of the 1984 polymer exemption rule (the "1984 exemption"), the Agency has reviewed over 9,000 polymers in the 90-day premanufacture notification (PMN) review process and over 1,500 polymers submitted as polymer exemption notices. In the course of performing hazard and risk assessments for these polymers, the Agency has established informal guidelines for identifying polymeric substances that do not present an unreasonable risk to human health or the environment. These guidelines are based on (1) an ongoing review of the available literature on the toxicity of polymers, (2) analyses of various samples of the PMN polymer data base, (3) information provided by outside groups during and subsequent to development of the 1984 exemption, and (4) the professional judgment of EPA staff scientists.

The Agency would like to bring the 1984 polymer exemption criteria into closer alignment with the internal criteria currently being used to assess hazards of polymers. The Agency believes that expansion of the 1984 exemption criteria would increase the number of polymeric substances eligible for exemption and would result in resource savings to industry and the EPA without decreasing or compromising the level of risk reduction/management afforded by a 90-day review of these same substances. The Agency is also proposing to reduce the information requirements, limit the Agency review, and change the timing of notice of manufacture for these "low risk" polymers. Overall, these amendments constitute a substantial revision of the existing rule.

II. Proposed Amendments

A. Summary of Proposed Amendments

1. *Definition of exemption category.* To be considered for exemption, substances must meet the definition of polymer in the rule. EPA is proposing to amend the definition of "polymer" to adopt the exact wording of the international definition of polymer which was agreed upon at the Organization of Economic Cooperation and Development (OECD) Expert Group Meetings on Polymers held in Toronto, Canada in January, 1990 and in Paris, France, in October, 1991. The definition is based on the 1984 polymer exemption definition with minor modifications. As with the current definition, the amended definition ensures that exempt substances have the structural characteristics common to the category of substances on which EPA has based its no unreasonable risk finding.

2. *Classes of polymers ineligible for exemption.* Section 723.250(d) of the 1984 exemption established certain classes of polymers that are ineligible for exemption. As with the 1984 exemption, polymers that degrade, decompose, or depolymerize would remain ineligible for exemption under this proposal. In addition, polymers that are prepared from monomers or other reactants that are not on the TSCA Inventory, and water-absorbing polymers with molecular weights (MW) equal to or greater than 10,000 daltons would be added to the list of ineligible polymers. This proposal would amend certain restrictions contained in the 1984 exemption for cationic polymers and polymers that contain certain particular elements. Under the proposal, the restriction on polymers that contain certain reactive functional groups that are intended or reasonably anticipated to undergo further reaction would be moved from paragraph (d) and included as part of the eligibility criteria for polymers with MW equal to or greater than 1,000 and less than 10,000 at § 723.250(e)(1). Finally, the following classes of polymers would no longer be ineligible for exemption: (a) polymers that contain less than 32 percent carbon; (b) biopolymers, their synthetic equivalents, and modifications and derivatives of biopolymers; and (c) polymers made from reactants that contain halogen atoms or cyano groups.

3. *Polymers eligible for the exemption.* Polymers with number-average MW greater than 1,000 and polyesters that are made from a specified list of reactants would remain eligible for exemption. However, under this proposal, the Agency would set limits on oligomer content and reactive functional groups for polymers with number-average MW equal to or greater than 1,000 and less than 10,000. In addition, polymers with number-average MW equal to or greater than 10,000 and restricted oligomer content would also be eligible for exemption, with certain restrictions relating to potential inhalation exposure of respirable water-insoluble polymer particles. Polyesters would remain eligible.

4. *General provisions.* To qualify for this exemption, manufacturers and importers would be required to submit an abbreviated notice within 30-calendar days after first manufacture or import of an eligible polymer instead of 21 days prior to manufacture (import) as required in the 1984 exemption. In this preamble and under the rule, references to "manufacture" and "manufacturer" include "import" and "importer", respectively, as defined in the PMN rule and as referenced in this rule.

Submission of specific information on the polymer would still be required, although the Agency proposes to eliminate certain data requirements, including information on production volume, use, residual reactant content, impurities, and byproducts.

With the elimination of the obligation to report many data elements, the use of EPA Form 7710-25 would not be required. In its place, the Agency would require submission of an abbreviated form which would limit the information requirements to the following elements: (a) submitter identification (company name, name of authorized official technical contact, telephone number of technical contact, site of manufacture or import), (b) date of commencement of manufacture or import, (c) type of polymer exemption, (d) chemical identity, and (e) certification that the polymer meets the conditions of the exemption and that submitters will provide worker protection or appropriate engineering controls to mitigate worker exposure where exposure to high MW water-insoluble polymers in respirable particle size is possible.

Under the proposal, polymer identity would be described by a Chemical Abstracts (CA) Index Name or CA Preferred Name in conformance with chemical identity requirements for all section 5 notices being proposed today in the **Federal Register** in a separate action under 40 CFR part 720. As required with the submission of all section 5 notices, submitters must provide all health and safety data in their possession or control with their notice.

Under the proposal, the Agency would maintain a separate list of exempted polymers for information retrieval purposes, but would no longer add these substances to the Inventory. Under the 1984 exemption, substances are added to the Inventory after receipt of a Notice of Commencement of Manufacture or Import. Such substances are listed with restrictions on residual monomers, reactants, and low MW species, as reported in the notice, and can only be manufactured within those prescribed limits.

As with the 1984 exemption, submitters would be required to maintain certain records. Under the proposal, submitters would be required to maintain a copy of the exemption notice at the reported site of manufacture or import, along with information that demonstrates compliance with the exemption, including analytical data that substantiates the submitter's claim of eligibility under criteria established for minimum number average MW and restricted oligomer content.

B. Discussion of the Proposal

The proposed rule adopts many of the provisions of the 1984 polymer exemption. However, as discussed above, some of the provisions of the 1984 exemption have been amended in light of the Agency's experience gained by its review of over 10,000 new polymeric substances. A discussion of these changes follows:

1. *Definition of polymer.* Under the proposal, the definition of polymer in the 1984 exemption would be revised to conform with the international definition of polymer recently adopted by OECD Member Countries, including the United States, Canada, Japan, and the Commission of European Communities. The revised definition retains the meaning and purpose of the 1984 exemption definition of polymer. The term "monomer unit", which would replace the non-standard term "internal subunit", would continue to define a grouping that is linked to two or more other molecules. Consequently, polymer molecules, defined as containing "at least three monomer units which are covalently bound to at least one other monomer unit or other reactant", would continue to require at least four precursor units, as in the current definition. The difference is that, under the proposal, at least three of the units must be internal, as opposed to only two in the current version; further, one of the non-internal groupings could come from an "other reactant" as well as from a monomer. The first change is slightly more restrictive and the second slightly less restrictive than the present definition. The net effect of the change, made to simplify agreement with protocols of the OECD, is expected to be minimal. "Monomer" and "reactant" would remain as defined in the 1984 exemption, and are consistent with the terms used for purposes of Inventory reporting and premanufacture notification, wherein "reactants" includes monomers, chain transfer and cross-linking agents, monofunctional groups that act as modifiers, and other end groups if they are incorporated into the polymer molecule.

2. *Polymers ineligible for exemption.* (a) *Exclusion of certain polymers that are cationic or anticipated to become cationic in aquatic environments.* The Agency continues to have ecotoxicity concerns for cationic polymers with specific characteristics. However, under the proposal the Agency would modify the current restriction on cationic polymers at § 723.250(d)(1) to provide that certain cationic polymers will be eligible for exemption if (i) the polymer is a solid material that is not soluble or dispersible in water and will be used only in the solid phase (for example, polymers that will be used as ion exchange beads), or (ii) the equivalent weight of cationic groups (e.g., amine, phosphonium, sulfonium) in the polymer is equal to or greater than 5,000. Equivalent weight means the ratio of the MW to the number of cationic functional groups.

The proposed modifications are based on the following considerations: (1) The Agency has concluded that if a cationic polymer is not soluble or dispersible in water, it will not be available in the aquatic environment to cause toxicity to aquatic organisms and (2) the Agency has found that polymers with a cationic functional group equivalent weight of 5,000 or greater do not have sufficient cationic characteristics to cause the environmental effects seen in materials that have higher cationic charge densities. There are many cationic polymers that are submitted as PMNs and receive low hazard ratings for health or environmental effects, but are not eligible for the polymer exemption as it is currently written. The above modifications would increase the number of polymers eligible for this exemption, without compromising the level of risk assessment/management these polymers would otherwise receive in a full 90-day PMN review.

The Agency is taking this opportunity to clarify an issue that has caused confusion to companies submitting polymer exemption notices in the past: For purposes of the 1984 polymer exemption, the Agency considers all amines (primary, secondary, tertiary amine, and quaternary ammonium) as groups that are cationic or anticipated to become cationic in aquatic environments. Based on the definition of "cationic polymer" in the 1984 exemption, any polymer that contains even one amine group is excluded from exemption. As a result, many polymers with very high amine equivalent weights (that is, very low amine content), such as polyamides, are excluded from the 1984 exemption. Under this proposal, polymers containing cationic functional groups may be eligible for exemption if the total equivalent weight of cationic groups is 5,000 or greater. All amine containing polymers with amine equivalent weights of less than 5,000 would be excluded from eligibility under this category.

(b) *Exclusion of polymers with certain weight content of certain elements.* The rule would continue to exclude from eligibility for exemption polymers containing certain levels of particular elements if they are present as an integral part of the polymer structure, or present as counterions in the polymer.

Elemental limitations were defined in the 1984 exemption and the Agency believes that the discussion and rationale for many of the elemental limitations in the 1984 exemption rule preamble and 1982 proposed rule are, in general, appropriate for this proposed rule. However, the Agency is proposing to expand the list of allowable elements set out at § 723.250(d)(2)(ii)(B) and (C) to include chlorine, bromine, and iodine as the monatomic counterions; and fluorine, chlorine, bromine, and iodine as covalently bound to carbon. Currently, the Agency's internal review criteria do not identify concerns for polymers based solely on the fact that the above mentioned halogens are present in a polymeric substance as a covalently bound substituent or as a counterion. Therefore, the EPA believes it appropriate to allow for these elements to be present in exemptible polymers. The provisions at proposed § 723.250(e)(1) would exclude reactive

functional groups, including reactive halogen containing groups, and would continue to limit the exemptible substances to those determined to be of lowest concern. The Agency solicits comment on and suggestions (with rationale) for these and any other elements to be added to these categories.

(c) *Exclusion of polymers that degrade, decompose, or depolymerize.* The rule would continue the exclusion at § 723.250(d)(3) for polymers that are designed or reasonably anticipated to substantially degrade, decompose, or depolymerize, including those polymers that could substantially decompose after manufacture and use, even though they are not actually intended to do so. The Agency believes that such polymers are likely to degrade to low MW species and/or residual reactants which present some of the major risks associated with such polymers. The 1984 exemption contains this same provision, and discussions on the topic can be found in the 1984 exemption rule and the 1982 proposed rule. The Agency believes the discussion and rationale for excluding polymers that may degrade, decompose, or depolymerize is appropriate for this proposed rule as well.

(d) *Exclusion of polymers that are prepared from monomers or other reactants that are not already on the TSCA inventory.* Under the proposal, polymers that are prepared from monomers or other reactants that are not on the TSCA Inventory would be ineligible for exemption at § 723.250(d)(4). Hazard concerns for polymers are often based on a concern for residual monomers or other reactants in the polymer. Under the proposal, information on levels of residual monomers or other reactants would no longer be required on the notice form. Instead, the evaluation and regulation of any potential risks posed by existing chemicals that may be present as residuals in the polymer would be addressed by a separate EPA program under other TSCA authorities such as section 4 and section 6. Accordingly, the Agency proposes to restrict this exemption to those polymers manufactured using only Inventory-listed constituent monomers, chain transfer agents, initiators, or other substances that are present as an integral part of the polymer structure or are present as counterions in the polymer. Consequently, the Agency will still have the option of reviewing polymers that contain new chemical monomers or other reactants through the full PMN process and regulating any new substances of concern that may be present as residual monomers or reactants.

(e) *Exclusion of water-absorbing polymers with number-average MW equal to or greater than 10,000 daltons.* Under the proposal, water-absorbing polymers having MW of 10,000 daltons or greater would be ineligible for the exemption at § 723.250(d)(5). A water-absorbing polymer is defined as a polymeric substance that, either in whole or in part, increases its volume when in contact with water. EPA believes that this category of polymers should not be eligible for the polymer exemption based on TSCA section 8(e) data recently received by the Agency on a water-absorbing polyacrylate polymer with a MW in excess of 1 million daltons. Preliminary data report squamous cell carcinoma and bronchio-alveolar carcinomas in a 2-year inhalation study in rats. The exposure concentrations were 0.05, 0.2, and 0.8 mg/m^3. Preliminary pathology reports state that cancer was observed in the two highest concentrations. Since this polymer has a MW in excess of 1 million daltons, no remaining reactive functionalities, and no residuals with MW less than 1,000 daltons, the Agency believes that the water-absorbing properties of the polymer may have a role in the carcinogenicity findings. Based on the toxicity data that have been received by EPA to date, the Agency is unable to establish an exact MW limit for water-absorbing polymers. However, the Agency believes that it is reasonable to set the number-average MW exclusion for water-absorbing polymers at 10,000 daltons. As discussed later in this Unit, polymers with a number-average MW of less than 10,000, in general, can be expected to be absorbed by the lung and therefore have different detoxification mechanisms available to mitigate potential health hazards.

3. *Elimination of specific exclusions contained in the 1984 exemption.* In the current proposal, the Agency has removed three of the exclusion criteria present in the 1984 exemption at § 723.250(d)(2), (4), and (5) including (a) polymers containing less than 32 percent carbon, (b) biopolymers, and (c) polymers manufactured from reactants containing halogen atoms or cyano groups. A discussion on why these limitations were removed is presented below.

a. *Polymers containing less than 32 percent carbon.* The 1984 rule at § 723.250(d)(2) excludes from exemption eligible polymers with less than 32 percent carbon by weight. This exclusion was intended to limit availability of the exemption to the types of polymers that have been frequently reviewed in the New Chemicals Program. The requirement that polymers must contain greater than 32 percent carbon was an added safeguard to prevent exotic, or unfamiliar, types of polymers from being eligible for the exemption. Based on its experience reviewing over 10,000 section 5 notices for polymers since 1979, EPA has seen very few polymers with less than 32 percent carbon and those notices seen have been rated as of low concern.

The Agency now believes that the other criteria that must be met for a substance to qualify for the polymer exemptions will provide sufficient restriction to the types of polymers that would be eligible for exemption, and therefore removal of the 32 percent carbon limitation is justified.

b. *Biopolymers.* The 1984 rule excludes from exemption eligibility at § 723.250(d)(4) biopolymers, synthetic equivalents of biopolymers, and derivatives and modifications of biopolymers. The Agency now believes that this condition can be removed entirely. Biopolymers were originally excluded from the polymer exemption based on EPA's limited experience with these compounds, the variety of substances within the class, and the potential wide range of uses for such polymers. The number of biopolymers reviewed as full PMNs has been small, and therefore EPA still has only limited experience with these compounds. However, EPA has had sufficient experience with many other classes of polymers to believe that biopolymers that meet the exemption criteria will not pose an unreasonable risk of injury to human health or the environment. The Agency believes that biopolymers that may be of concern, such as proteins and antibodies, would not be eligible for the polymer exemption due to the fact that they would not fall within the polymer definition in the exemption because they have a discrete MW. In order to be a "polymer", polymer molecules must be distributed over a wide range of MW. As an example, the highly toxic protein ricin has a definite structure and a discrete MW and would therefore not be eligible for the polymer exemption.

c. *Polymers manufactured from reactants containing halogen atoms or cyano groups.* Based on an analysis of health and ecotoxicity concerns for polymers received as non-exempt PMNs subject to the 90-day review, the Agency now believes that this requirement is unnecessarily restrictive and should be eliminated altogether.

The Agency's intent in excluding polymers that contain halogen or cyano groups from exemption eligibility was, as stated in the polymer exemption rule

of 1984, to "exclude polymers that contain low MW species or residual substances composed of halogen atoms or cyano groups". Information from the PMN database shows that when the content of low MW species of cyano- or halogen-containing polymers is below the levels specified by the proposed eligibility requirements for polymers with number-average MW of 1,000 or greater and less than 10,000 (and oligomer content less than 10 percent below MW 500 and less than 25 percent below MW 1,000), the EPA, in general, has low concern for the polymer. Further, EPA also has low concern for polymers with MW of 10,000 or greater (and oligomer content less than 2 percent below MW 500 and less than 5 percent below MW 1,000). Since, in the proposed exemption, eligible polymers may be made only from Inventory-listed monomers or other reactants, any remaining concerns over residual monomers can be dealt with under other TSCA authorities such as section 6. The proposed exemption criteria address the Agency's concerns for all low MW species including those containing halogen or cyano groups. It is hoped that the benefit of allowing manufacturers to commence production of more polymers eligible for exemption will provide incentive to submitters to manufacture materials with low concentrations of oligomeric species.

Further, as a matter of policy, EPA has not taken action on a PMN polymer under section 5(e) when the only concern was for an existing chemical present as unreacted monomer, i.e., residual monomer. Under this proposal, only polymers manufactured from Inventory-listed monomers would be eligible for exemption. Since the proposed criteria would restrict low MW species and any residual monomers would be existing chemical substances that would be addressed by a separate EPA program, the Agency believes that a separate exclusion from polymer exemption eligibility for halogen- and cyano- containing polymers is no longer necessary. The Agency believes that concerns for residual monomers in general and specifically those containing halogen or cyano groups would best be handled by an existing chemicals program initiative, and not on a case-by-case basis under section 5 in the new chemicals program.

4. *Polymers eligible for the exemption (§ 723.250).* The Agency is proposing to amend the exemption criteria for polymers of 1,000 MW or greater by establishing two MW ranges with restricted oligomer content. Section 723.250(e)(1) would set out exemption criteria for polymers with number-average MW equal to or greater than 1,000 and less than 10,000, while § 723.250(e)(2) would set out criteria for polymers with number-average MW equal to or greater than 10,000. The exemption criteria for polyester polymers manufactured using certain specified precursors would be retained under this proposal and redesignated at § 723.250(e)(3). Under the proposal, polymers eligible for exemption include the following:

a. *Polymers with number-average MW equal to or greater than 1,000 and less than 10,000.* Section 723.250(e)(1) would exempt polymers with number average MW equal to or greater than 1,000 and less than 10,000 (and oligomer content less than 10 percent below MW 500 and less than 25 percent below MW 1,000) provided the polymer also meets the following criterion: the polymer may not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction as specified in § 723.250(e)(1)(ii).

i. *Restrictions on number average MW and oligomer content.* As stated in the preamble language to the 1984 exemption published in the **Federal Register** on November 21, 1984 (49 FR 46081) the selection of MW as a risk-limiting criterion rests on two principles. First, a chemical must be absorbed by an organism in order to cause an adverse health or ecological effect, other than direct contact effects. Secondly, the ability of a molecule to pass through membranes and therefore be absorbed by organisms generally decreases with increasing MW (size).

Based on these principles, the Agency believes that low MW species content provides an appropriate indication of the concerns that EPA has for polymers, namely, the content of potentially absorbable low MW compounds. The proposal would include restrictions on the percentage of low MW components directly derived from the monomers or other reactants for § 723.250(e)(1) polymers. The proposed criteria would require that oligomer content be less than 10 percent below MW 500 and less than 25 percent below MW 1,000. These values are based on a retrospective study conducted on over 100 polymers rated as having low concern, including their accompanying test data, an assessment of their potential to cause human health effects and environmental toxicity, and a rating of the expected amount of toxicity. This study, entitled "Evaluation of Tentative Terminations in New Chemical Review," is available in the public docket for this rulemaking (OPPTS–50594).

The 1984 polymer exemption requires companies to supply information on low MW species content, but these data are not part of the criteria for eligibility. Based on the 1984 polymer exemption, companies are legally bound to manufacture polymers with equal to or less than the percent of low MW species and residual monomer concentrations reported in the polymer exemption notice for a new substance. If a company desires to manufacture a polymer with higher amounts of low MW species or residual reactants than were reported in the polymer exemption notice, then a second polymer exemption application or a PMN must be filed. In the proposed approach, companies would be free to manufacture a polymer for which they had filed a polymer exemption notice with any MW characteristics or residual reactant content desired, as long as the percentages of low MW species did not exceed the levels specified in the exemption criteria.

ii. *Restriction on reactive functional groups.* The rule would exclude from eligibility under the § 723.250(e)(1) criterion certain polymers that contain reactive functional groups that are intended or can reasonably be anticipated to undergo further reaction. The rule also would amend certain restrictions in the 1984 exemption.

As discussed in the 1984 exemption and the 1982 proposed rule, polymers that contain reactive functional groups may be capable of reacting with tissues or other chemical constituents of living organisms. Absorption of polymers containing reactive functional groups is also plausible since reactive groups often cause sufficient irritation to disrupt normal cell membrane barriers and facilitate penetration.

Consistent with § 723.250(d)(6)(ii) of the 1984 exemption, polymers that contain certain reactive functional groups that generally lack reactivity in biological settings would still be eligible for the exemption under this proposal. Therefore, under § 723.250(e)(1)(ii)(A) of the proposal, polymers containing only the following reactive and/or other functional groups would remain eligible for the exemption: carboxylic acid groups, aliphatic hydroxyl groups, unconjugated olefinic groups that are considered "ordinary", butenedioic acid groups, and those containing conjugated olefinic groups contained in naturally-occurring fats, oils, and carboxylic acids. Further, based on the Agency's experience in reviewing polymers since the 1984 exemption was promulgated, EPA now believes that the following groups generally lack or have low adverse reactivity in biological settings, and is therefore proposing to add them

to the above list: blocked isocyanates (including ketoxime-blocked isocyanates) thiols, unconjugated nitrile groups, and halogens (except reactive halogen-containing groups such as benzylic or allylic halides).

iii. *Approach to establishing other reactive functional group equivalent weights.* In the 1984 exemption, the Agency established equivalent weight criteria which allowed low concentrations of reactive functional groups to be present in the polymer molecules. At that time it was believed that a level of less than 1 gram-formula weight of reactive functional groups in 10,000 grams of polymer was sufficient to ensure that the reactive functional group was substantially diluted by polymeric material. Based on the Agency's experience in reviewing polymers since the 1984 exemption was promulgated, EPA now believes that the reactive functional group equivalent weight of 10,000 can be lowered to 5,000. In addition, the Agency is also proposing to establish allowable equivalent weights at 1,000 for the combined weight of certain polymer reactive functional groups other than those in § 723.250(e)(1)(ii)(A), which would not have an equivalent weight limit, based on the Agency's lower level of concern for these reactive groups. These groups would include the following: acid halides; acid anhydrides; aldehydes; hemiacetals; methylolamides, -amines or -ureas; greater than C2 alkoxysilanes; allyl ethers, conjugated olefins; cyanates; epoxides; imines; and unsubstituted positions *ortho* or *para* to phenolichydroxyl.

All other reactive functional groups would be required to have a combined equivalent weight of 5,000 or greater, including pendant acrylates and methacrylates, aziridines, carbodiimides, halosilanes, hydrosilanes, hydrazines, isocyanates, isothiocyanates, *alpha* or *beta* lactones, methoxy or ethoxy silanes, vinyl sulfones or analogous compounds and any reactive functional group not listed at § 723.250(e)(1)(ii)(A) or (B).

This proposal would increase the number of polymers eligible for exemption under this category; however, the added complexity of this approach may not be justified relative to the number of additional polymers that might be made eligible. Specifically, the Agency is concerned that smaller businesses or those with limited technical resources would have trouble interpreting the exemption criteria for reactive functional groups, if the groups are complicated, and may choose not to use the exemption for eligible polymers. Such persons would, of course, have the option of using 5,000 as the equivalent weight if they are uncertain whether a particular reactive functional group is listed under § 723.250(e)(1)(ii)(A) and (B). Therefore, the Agency is seeking comment on this approach and the alternative one discussed later in this document.

EPA believes that restrictions on reactive functional groups are not necessary for polymers with a number-average MW equal to or greater than 10,000 because polymers of this size would not be expected to be absorbed by biological systems.

b. *Polymers with number-average MW equal to 10,000 or greater.* Section 723.250(e)(2) would exempt polymers with number average MW equal to 10,000 or greater (and oligomer content less than 2 percent below MW 500 and less than 5 percent below MW 1,000), provided the submitter evaluates the potential for inhalation exposure to respirable particles of water-insoluble polymers and provides adequate notification and appropriate protective measures, if warranted, as specified at § 723.250(e)(2)(i) through (e)(2)(v) of the proposed rule. The Agency is proposing to establish a separate category for polymers with number-average MW equal to or greater than 10,000 because this category of polymers is not readily absorbable by any route of exposure; further, low MW species below 500 and 1,000 will be restricted under this proposal. EPA does, however, have a concern for potential effects that may be caused by inhalation of respirable particles of water-insoluble high MW polymers. In the 1984 exemption, the Agency discussed its concern for potential health risks such as the development of fibrosis of the lung or other pulmonary effects that may result upon inhalation of polymers in particulate form. At that time the Agency believed that such exposure to polymer particulates was generally limited and expected to be of low concern. The Agency now believes that it may be inappropriate to make a "no unreasonable risk" finding for high MW water-insoluble polymers without requiring evaluation of potential exposure to respirable particles of such polymers. Thus far, the Agency has no data to warrant any concern for inhalation toxicity for water soluble polymers.

The Agency has received TSCA section 8(e) data that report irreversible lung damage on experimental animals when respirable size water-insoluble polymer aerosols are inhaled. Pulmonary damage induced by inhalation exposure to the subject polymers includes chronic inflammatory response, lymphoid hyperplasia in mediastinal or bronchial lymph nodes, nodular histiocytosis in mediastinal or bronchial lymph nodes, fibrotic alveolar lesions, interstitial fibrosis and alveolar tumors. The data also demonstrate that the onset of the polymer-induced damage may be delayed for as long as 6 months after exposure. The toxicity may be a result of "overloading" the clearance mechanisms of the lung; however, at this time the Agency does not have sufficient toxicity data to either confirm or discount the "overload" theory. The Agency does not have sufficient data to determine the precise MW and/or structural considerations that may facilitate the mechanisms causing toxicity, although data received to date indicate that lung toxicity is produced by water-insoluble polymers with a MW as low as 70,000 and at respirable concentrations as low as 4 mg/m^3.

In light of these data, EPA has concerns for lung effects from water-insoluble polymers with MW of 70,000 or greater. Although to date EPA has no inhalation data on polymers eligible for the proposed exemption with MW of less than 70,000, adverse lung effects resulting from inhalation exposure to water-insoluble polymers with MW of 10,000–70,000 cannot be ruled out. Substances in the 10,000–70,000 MW range are, in general, not readily absorbed by any route of exposure. Thus if alternative lung clearance mechanisms are overloaded, lung toxicity would be expected to occur. Polymers with a MW of less than 10,000, in general, can be expected to be absorbed by the lung and therefore have different detoxification mechanisms available to mitigate potential health hazards. Further, EPA does not expect water-soluble polymers to exhibit lung toxicity because they are expected to rapidly clear the respiratory tract and therefore not cause an overloading effect. The Agency requests comment on the MW range anticipated to produce toxicity.

Currently, the New Chemicals Program, in response to the TSCA section 8(e) data referenced above, is more rigorously evaluating the inhalation exposure potential of water-insoluble polymers with MW greater than or equal to 70,000 that are submitted as PMNs or polymer exemption applications. In cases where the manufacturing, processing, or use of such polymers is expected to result in exposure to respirable particles, the Agency would use its regulatory authority under section 5(e) to limit human exposure. Under section 5(e) of

TSCA, the Agency can limit or control the activities associated with a chemical substance if such activities may present an unreasonable risk to human health or the environment.

Under today's proposal, polymers ranging from 10,000–70,000 daltons (with the exception of water-absorbing polymers ineligible at § 723.250(d)(5)) would be eligible for the exemption, provided the manufacturer evaluates potential inhalation exposure, and if such exposure exists, implements certain procedural safeguards to control inhalation exposure. This approach would allow the Agency to make a determination for purposes of section 5(h)(4) of TSCA that this category of polymers will not present an unreasonable risk to human health or the environment. Further, until more definitive data on the inhalation toxicity of high MW polymers are submitted to EPA for review, the Agency believes that the additional requirements for this MW range are a reasonable response to the TSCA section 8(e) data received.

The Agency has considered several alternatives for dealing with potential lung effects in the context of the polymer exemption which are described in Unit III of this preamble. Under the proposal, manufacturers of water-insoluble polymers with MW of 10,000 or greater would be required to certify that they are aware of the potential for harmful lung effects upon inhalation of certain high MW polymers, and would provide, at a minimum, worker protection in the form of a NIOSH-approved category 21C, 23C, or equivalent respirators if there is a potential for inhalation exposure to any respirable particulates of the exempted polymer. Alternatively, manufacturers could insure that workplace respirable dust does not exceed 0.5 mg/m^3, as an 8-hour TWA based on present data, to reduce worker exposure. Manufacturers would be required to notify processors and industrial users of potential inhalation exposures and would be required to cease distribution to customers who failed to provide the prescribed worker protection measures.

The Agency believes that a level of 0.5 mg/m^3 will provide an adequate margin of safety in light of the data and that this level is technologically feasible. The Agency requests comment on typical airborne concentrations, particle sizes and respirable content of commercial products.

The Occupational Safety and Health Administration (OSHA) Permissible Exposure Limit (PEL) for respirable particulates, not otherwise regulated is 5 mg/m^3 (29 CFR 1910.1000) as an 8-hour time-weighted average (TWA). EPA assumes that companies are in compliance with the OSHA PEL and are controlling employee exposure to 5 mg/m^3 or below by using engineering controls, respiratory protection, etc., as required by the standard. However, in light of the data noted above, EPA believes it is reasonable to require a lower limit for respirable particulates of water-insoluble polymers. To achieve compliance with the 0.5 mg/m^3 exposure limit proposed by EPA, additional engineering controls, work practices, good housekeeping practices, or different respiratory protection may be needed. EPA prefers the use of process changes, engineering controls, and work practices to reduce inhalation exposure to acceptable levels, and believes that in many cases, companies already in compliance with the OSHA PEL of 5 mg/m^3 would be able to achieve the 0.5 mg/m^3 exposure limit by modifying and improving the existing work practices, housekeeping, and maintenance practices, to reduce the amount of dust generated, or by upgrading engineering controls or respiratory protection currently used. However, EPA realizes that the OSHA PEL does not apply to all workplaces and that there are different PELs for different industry groups such as construction. EPA requests comments and information on typical airborne concentrations of respirable high MW polymers and airborne particle size distributions measured in the workplace, and on process changes, engineering controls, work practices, etc., that would be needed to meet the exposure limit of 0.5 mg/m^3 for respirable particulates of high MW polymers.

Examples of process changes to reduce inhalation exposure include manufacturing, processing, and using materials in solution, in pellet form, or as a wet cake instead of drying the material and handling it as a powder or in other particulate forms. Application methods other than spray application (e.g., roller coating, dip coating , etc.) can also reduce inhalation exposure as the potential for aerosol generation is reduced. In addition, good housekeeping practices, appropriate maintenance and good work practices, (e.g., wet mopping or vacuuming spills instead of dry sweeping, repair of leaks as soon as possible, etc.) can also reduce the amount of dust generated, and the potential for inhalation exposure.

Where engineering controls are employed as an alternative to respirators, the initial exposure assessment must be sufficient to insure that the airborne concentration of respirable high MW polymers does not exceed 0.5 mg/m^3. In such cases, EPA recommends but would not require personal monitoring and requests comments on appropriate collection devices. Respirable cyclone dust samplers which are commonly used to differentiate the respirable fraction from larger particles in the aerosol may be inappropriate for high MW polymer materials. The performance of the 10 mm plastic cyclone (which is commonly used to collect respirable dust) has been criticized because an electric charge can accumulate on the plastic and distort the collection characteristics. EPA encourages the use of an impactor or other suitable collection device for sample collection for high MW polymer materials and is interested in comments.

c. *Polyester polymers manufactured solely from reactants listed at § 723.250(e)(3).* The Agency has had sufficient experience in reviewing polymer exemption notices for polyester polymers that are prepared using reactants specified in the 1984 exemption rule that the Agency does not believe such polymers represent a risk to human health or the environment. Accordingly, the Agency believes that these polyester polymers should continue to be eligible for exemption. The only change EPA is proposing to this exemption is the deletion of a footnote that would no longer be applicable, because under the proposal all monomers and reactants used to manufacture the polymer must be on the TSCA Inventory.

There are many polyester polymer reactants that are not included in the 1984 polyester exemption list, and the Agency has had requests to expand the list. Except for the chemicals currently listed in the 1984 exemption rule, the Agency has no experience in evaluating polyester reactants in a shortened review period. Therefore, the Agency cannot make a "no unreasonable risk" finding for "new" polyester reactants without conducting a limited review of the polymers that contain the "new" reactants.

The Agency solicits comment on the relative merit of expanding the list of polyester reactants and also requests suggestions and supporting data for adding other polyester reactants to the current list. Potential health or environmental effects of these reactants will be evaluated by the Agency and any low concern reactants may be added to the list in the final rule. However, in the case of anhydrides, which were inadvertently listed in the title of di and tri basic acid reactants in the 1984 exemption, but not included as specific reactants, EPA still does not believe that a "no unreasonable risk" finding can be

made for this class of substances that are used as reactants for polyester polymers. Certain anhydrides are known to be respiratory and/or dermal sensitizers and cause such effects at concentrations as low as 50 mg/m^3. Based on these concerns, the Agency believes it cannot justify the addition of anhydrides to the list of polyester reactants.

5. *Determination of eligibility.* The Agency believes that, when a polymer is manufactured under the terms of the proposed exemption, it is reasonable for the manufacturer to take on a greater burden to demonstrate eligibility than under the 1984 exemption because EPA is proposing to eliminate its pre-manufacturing review of these notices. Under the 1984 exemption, the Agency did not require that submitters perform analytical measurements of the physical and chemical properties of polymers, but allowed manufacturers to determine compliance with the exemption conditions on whatever basis deemed appropriate by the manufacturer. These included using past experience by correlating observed or measured values of the properties of similar polymers to the polymer in question, using stoichiometric relationships based on knowledge of the starting materials and expected reactions, or using knowledge or process and purification steps.

Under this proposal, the Agency would no longer review the exemption notices, prior to manufacture of the exempted polymer. Consequently, the Agency expects the manufacturer to take the steps necessary to ensure that a chemical substance is eligible for exemption. Therefore, the Agency believes that it is necessary to require that a manufacturer maintain appropriate data to demonstrate that a substance meets the eligibility criteria for § 723.250(e)(1) and (e)(2) to ensure compliance with the exemption. This requirement would not apply to the polyester exemption at paragraph (e)(3), since this category does not impose a minimum number-average MW or restrict oligomer content as criteria for eligibility.

Under § 723.250(l)(2)(ii)(C) and (D) of the proposal, the Agency would require that manufacturers of exempt substances at (e)(1) and (e)(2) maintain appropriate analytical data to demonstrate that the polymer meets the minimum number average MW and corresponding restrictions on oligomer content. The Agency would not specify a particular analytical method to demonstrate compliance with the eligibility criteria, but would allow the manufacturer to use an appropriate method of analysis that generates the data to verify compliance with the criteria, such as gel permeation chromatography or vapor pressure osmometry. Performance of such analysis would be required prior to commencement of manufacture or import in accordance with the exemption.

EPA expects that if conditions, such as reaction temperature or sources for feedstock change, manufacturers will take steps to determine the effect of such a change so as to ensure continued compliance with the exemption. The rule would require that manufacturers maintain, at the site of manufacture, records demonstrating a substance's eligibility, along with a copy of the notice submitted to the Agency upon commencement of manufacture of the exempted substance. Manufacturers must follow the provisions of the exemption for research and development (R&D) activities during the period of evaluation of eligibility of a substance under the exemption criteria prior to actual manufacture under the exemption provisions. Such R&D activities would be subject to the R&D procedural and recordkeeping provisions in the PMN rule at § 720.36 and § 720.78, respectively.

6. *Timing of notification.* The notice procedure being proposed at § 723.250(f) would require that the notice be filed within 30 days after manufacture or importation for commercial purposes instead of 21 days prior to manufacture of an eligible polymer as under the current exemption. This would allow EPA to capture some basic information on the exempted polymers and their manufacturers/importers with minimal reporting burden on the submitter. EPA recognizes that one of the major benefits of this exemption is that it allows companies to respond more rapidly to market demand and to introduce new chemical substances more quickly into commerce.

7. *Information requirements.* The Agency is proposing to amend § 723.250(f) to eliminate certain data elements. To accommodate the abbreviated information requirements, the Agency is proposing to replace EPA Form No.7710–25 at § 723.250(f)(1) with a modified form. Some of the 1984 exemption information requirements at § 723.250(f)(2) will remain the same, including manufacturer's name, type of exemption, generic chemical identity, and test data and other data. Other provisions of the notice contents in the 1984 exemption at § 723.250(f)(2) would be revised as follows:

a. *Site of manufacture.* The Agency is proposing to amend this requirement at § 723.250(f)(2)(iii) to also include site of import for an imported exempt polymer.

b. *Chemical identity.* The proposal would amend the chemical identity information requirements at § 723.250(f)(2)(iv)(A) to require a Chemical Abstracts (CA) Index Name or CA Preferred Name, CAS Registry number (or EPA Inventory accession or PMN number) for each reactant used at greater than 2 percent (by weight) to manufacture the polymer, or alternatively, incorporated at greater than 2 percent (by weight) in the polymer. Elsewhere in today's **Federal Register**, EPA is proposing to amend the "Two Percent Rule" to allow submitters greater flexibility in determining the amount of monomer or reactant used in the manufacture of a polymer. Manufacturers who choose to use the "incorporated" method, would be required at § 723.250(f)(2)(iv)(A) to maintain appropriate analytical data to demonstrate compliance with the "Two Percent Rule". Any reactant charged to the reactor at greater than 2 percent (by weight) must be identified in the polymer name unless data are developed to ensure that the reactant is incorporated at 2 percent or less in the polymer. The proposal will eliminate the requirement for maximum percentage composition for each monomer or other reactant used to manufacture the polymer, and manufacturers would no longer be required to specify any reactants used at 2 weight percent or less in the manufacture of the polymer unless the manufacturer wishes to include such reactants as part of the polymer chemical identity. Further discussion on the "Two Percent Rule" rule appears below.

Under the proposal, the manufacturer would also be required at § 723.250(l)(2)(iv)(C) to provide the CA Index Name or CA Preferred Name for the polymer and any CAS Registry Number that exists for the polymer. This requirement would be consistent with the Agency's proposal published elsewhere in today's **Federal Register** to require that submitters use CAS nomenclature in all section 5 notices.

Under the proposal, number-average MW, maximum weight percent of each monomer or other reactant that will be present as residual in the polymer as manufactured for commercial purposes, and impurity information will no longer be required on the notice form. However, under § 723.250(l)(2)(C) and (D), the manufacturer would be required to maintain appropriate analytical data to demonstrate that an exempted polymer at § 723.250(e)(1) or (e)(2) meets the specific number-average MW

and restricted oligomer content criteria, as discussed above under Unit II.B.5 of this preamble. This proposal would allow the company to make the polymer with MW ranges, or residual reactant concentrations, etc., as the company desires, provided that these values fall within the exemption criteria.

Further, production volume and category of use would no longer be required since the exemption criteria are based primarily on a "low hazard" determination of the eligible polymer itself and do not require an exposure evaluation, except in the case of inhalation exposure to water-insoluble high MW polymers as discussed elsewhere in this document.

c. *Certification.* This requirement would be amended to require certification at § 723.250(f)(2)(vii)(E) that the manufacturer of a water-insoluble polymer with a number average MW equal to or greater than 10,000 is aware of the potential for harmful lung effects upon inhalation of respirable particles of certain high MW polymers and would comply with the evaluation and notification requirements at § 723.250(e)(2). Certification that the person submitting the notice has provided a currently correct chemical identity for the polymer using CAS nomenclature would also be required under the proposal at § 723.250(f)(2)(vii)(F).

8. *Two percent rule for polymers.* In a separate regulatory action, the Agency is proposing to amend the "Two Percent Rule" for polymers to allow submitters greater flexibility in determining the amount of monomer or reactant used in the manufacture of a polymer. EPA believes that allowing submitters to report on the basis of amount incorporated in the polymer as an alternative to the current practice of requiring reporting based on the amount "charged" to the reactor will provide a better indicator of physical, chemical, and toxicological properties of polymers. At the same time, this will allow manufacturers greater flexibility in commercial innovation, reduce the number of PMNs representing slight variations in polymer composition, and provide greater consistency with international reporting policies. Further discussion of this issue is contained in the proposed PMN rule amendments being published elsewhere in this issue of the **Federal Register**.

9. *Receipt and review of notice.* Under paragraph (g), the Agency would continue to announce receipt of exemption notices in the **Federal Register**. However, the Agency would no longer review the exemption notice since the proposal would require submission of the notice within 30 days of manufacture of an exempted substance under terms of the exemption. In order to ensure compliance with the provisions of this exemption, the Agency expects to include as part of its on-going inspection process, an examination of pertinent records documenting compliance with the exemption requirements.

10. *Recordkeeping.* EPA believes that recordkeeping requirements are an essential component of an effective exemption enforcement program and would retain and modify this provision in the proposed rule at § 723.250(l). Documentation of information in the notice would be used by enforcement personnel to determine compliance. The recordkeeping requirements would be amended at § 723.250(l)(2)(i) to require that the manufacturer maintain a copy of the completed exemption form at the reported site of manufacture or the site of import. Under the provisions of the exemption, the manufacturer would also be required at § 723.250(l)(2)(ii)(C) and (D) to maintain documentation which demonstrates that the first commercial batch of polymer manufactured for commercial purposes under the exemption meets the eligibility criteria for minimum number average MW and restricted oligomer content for (e)(1) and (e)(2) polymers. The proposed regulations at § 723.250(l)(2)(ii)(D) would also require the generation of subsequent documentation to ensure compliance with the exemption if conditions occur, such as reaction temperature or sources for feedstock change, which result in a significant change in the manufacturing process. Further, manufacturers using the method of incorporation for determining compliance with the "Two Percent Rule" would be required to maintain documentation at § 723.250(l)(2)(ii)(E).

Under the proposal, the manufacturer would further be required at § 723.250(l)(2)(iv) to maintain documentation of the nature and method of notification of risk of inhalation toxicity for water-insoluble polymers with number average MW equal to or greater than 10,000 as specified at § 723.250(e)(2)(iii) and (iv).

11. *Inspections.* Under the proposal, EPA would continue to periodically inspect all companies which have submitted TSCA section 5 notices, including exemptions. Those submitters with violations may be inspected more frequently.

To determine compliance with the exemption, the EPA inspector will focus on the information in the exemption notice and the company's records, including the analytical data documenting the substance's eligibility under the exemption.

12. *Revocation.* The proposed rule includes provisions to revoke the exemption for an exempted polymer and require a full PMN review if, subsequent to granting the exemption, EPA obtains information indicating that a particular polymer or category of polymers may present an unreasonable risk of injury to health or the environment. As new data are developed for certain polymers or category of polymers (such as the toxicity of high MW polymers), the Agency may conclude that an exempt polymer causes unacceptable risks. This is a change from the corresponding provision at § 723.250(p) The current provision contains two separate provisions for notification of ineligibility, one that is applicable during the period from notice submission until commencement of manufacture, and a second that applies after commencement of manufacture. To reflect the proposed elimination of the 21-day review period, the proposed revocation provision would provide a single procedure.

Under this proposed rule, if the polymer were eligible for exemption, the polymer would not be listed on the Inventory of existing substances. As a result, manufacture of the substance by anyone other than the company submitting the exemption application is precluded. Since the exempted polymer would still be a "new" chemical substance, revocation of exemption status under the terms of the proposed rule would be accomplished directly, without utilizing other TSCA authorities.

13. *Confidentiality.* The proposed rule at § 723.250(h) has retained essentially the same provisions for confidentiality as the 1984 exemption and the final premanufacture notice rule (§ § 720.80, 720.85, and 720.90), including a requirement that submitters provide a sanitized copy of the exemption notice in which all confidential information has been deleted. Please consult the preamble to the 1984 exemption (49 FR 46080) for a further discussion of this issue.

14. *Inventory status of exempted polymer.* The TSCA Chemical Substance Inventory (Inventory) is a list of substances that are manufactured, imported, or distributed for a commercial purpose in the United States. Unless specifically excluded from TSCA reporting requirements, a substance not already included on the Inventory must undergo PMN review at least 90 days before commercial manufacture or importation can begin.

Upon the completion of the 90-day review period, a Notice of Commencement (NOC) must be submitted within 30 days following the commencement of manufacture or importation of the PMN substance for a commercial purpose. Since polymers which meet the exemption criteria would not be subject to PMN review, they would not be included on the Inventory. Instead, EPA would maintain an independent polymer exemption file. By not being included on the Inventory, exempted polymers will not be considered to be "existing" chemical substances under TSCA. All persons who intend to manufacture or import a polymer under the conditions specified in the exemption criteria would be required to submit an exemption notice, regardless of whether the polymer is already included in the special exemption file. If a manufacturer wishes to manufacture a polymer outside the scope of the proposed exemption criteria, a PMN or other section 5 notice will be required. In the case of a PMN, a polymer is added to the Inventory only upon the receipt of a NOC by EPA. Therefore, it is possible that a given polymer could be listed both in the special polymer exemption file and on the Inventory. Polymers that were reviewed under the 1984 polymer exemption rule and included on the Inventory would remain on the Inventory, with the restrictions concerning low MW species content and maximum residual amounts of reactants specified for each exempted polymer still in force.

15. *Transition period between proposed and final rule.* The Agency will continue to accept polymer exemption notices under the terms of the 1984 exemption at 40 CFR 723.250 until the effective date of any final rule that amends this section. At that time, all exemptions granted by EPA under the terms of the 1984 polymer exemption regulations will remain in effect; however, no new exemptions will be granted under the 1984 polymer exemption rules. Submitters who were granted an exemption under the terms of the 1984 exemption have the option of manufacturing under those terms or of submitting a new exemption notice under the amended regulations.

If an exemption holder continues to follow the 1984 exemption rules, the NOC requirements apply and the exempt polymer will continue to be listed on the Inventory with exclusion criteria, exemption category restrictions, and residual monomer and low MW species content limitations. The exemption holder and any subsequent manufacturers of the polymer must comply with these criteria, or submit a new exemption notice or PMN.

III. Alternatives and Request for Public Comment

EPA requests comments and data on all aspects of this proposal, including provisions of § 723.250 that EPA has proposed to retain unchanged from the 1984 exemption. EPA will consider all comments and data received during the comment period and may amend any provision of § 723.250 where appropriate, based on these comments. Additionally, EPA requests comment on the specific issues and options outlined below.

A. Other Polymers Considered for Exemption

1. *Polymer salts.* The Agency has also considered a proposal to exempt certain salts of polymers that are listed on the TSCA inventory.

During FY 1990, EPA reviewed over 500 PMNs on salts of TSCA Inventory-listed polymers that were submitted by chemical manufacturers. As a result of the Agency's analysis of the health and environmental concerns associated with these polymer salts, EPA determined that in these cases polymer salts generally represented a low hazard, based on structure/activity analysis. In the few cases where potential health and/or environmental concerns were identified in a preliminary review, the Agency determined that the concerns were based on an analysis of the corresponding existing chemical substance (amine or other basic components) used to manufacture the polymer salt, and not on the polymer salt itself. EPA took no action to regulate these salts during the PMN review period. The results of this review support the Agency's view that polymer salts of Inventory-listed polymers as described above, generally present a low risk to health and the environment. Further, Agency concerns associated with the amine or other basic component could be addressed through mechanisms other than requiring new chemical reporting.

The Agency does, however, realize that there exist many polymers listed on the Inventory that have never been subject to the scrutiny of the new chemical substance review. Because of that fact, it is difficult to make the determination that these polymers will not present an unreasonable risk to human health or the environment. It follows, therefore, that the salts of these Inventory listed polymers would have the same uncertainty associated with them. However, EPA believes that many polymer salts would be eligible for exemption under the criteria being proposed in Unit II of this preamble. The Agency invites comments on the treatment of salts of existing polymers as a separate category within the context of this rule.

2. *Other polymers.* EPA considered an option of an expedited 21-day review of all polymers not meeting the exemption criteria which could actually be extended to 90 days if necessary. EPA did not propose this option because these polymers could potentially present significant risk, based on EPA's review of these polymers over the past 10 years. Therefore, these polymers could not be adequately reviewed in the 21-day time frame. EPA believes that a closer examination of the conditions of manufacturing, processing, distribution, use, and disposal during a full 90-day PMN review period is therefore necessary.

B. Notification and Timing of Submission

The Agency considered several options regarding the submission requirements and timing of submission of a polymer exemption application, as discussed below:

1. *No reporting.* The Agency considered an exemption which did not require a manufacturer to notify EPA that a polymer was being manufactured under the exemption, similar to the R&D exemption. As with the exemption for small quantities manufactured solely for R&D at § 720.36, recordkeeping would be required to verify compliance with the exemption criteria. This approach would allow the manufacture of polymers meeting the exemption criteria without the submission of a section 5 PMN or an exemption notice. It would require that manufacturers of such polymers maintain extensive records to verify compliance with the exemption criteria. However, the Agency believes that this approach would eliminate any direct mechanism for monitoring compliance since the Agency would not know the identity of the manufacturer or polymer being produced under the exemption.

2. *Notification on the first day of manufacture.* This option would require that a company submit an abbreviated notice post-marked on the first day of manufacture. The Agency considered this option because it would assure timely reporting, which would aid monitoring and enforcement of the exemption. However, based on comments previously received from the Chemical Manufacturers Association (CMA) on the timing of the NOC, EPA recognizes that requiring notices to be submitted on the same day of

manufacture would be difficult because of "coordination difficulties or the press of other business." (48 FR 41140, September 13, 1983). As stated at that time, EPA believes that companies should be allowed some latitude in when they submit NOCs and that notices submitted a short time after manufacture begins should be accepted. However, under the proposed recordkeeping requirements, EPA believes that under the ambit of the R&D provisions, all information required to support a substance's eligibility under the exemption, including analytical data demonstrating eligibility of § 723.250(e)(1) and (e)(2) polymers, would have to be available prior to first manufacture of an exempted polymer for commercial purposes.

3. *Retention of 21-day premanufacture notification.* As with the current exemption, eligible polymers meeting the exemption criteria would be subject to a 21-day review prior to the commencement of manufacture. EPA believes that such a reporting requirement would require the continuing use of substantial EPA resources to review the data. The Agency believes that this review period is unnecessary, based on EPA's finding that polymers that meet these exemption criteria will not present an unreasonable risk. By not reviewing this category, the Agency can focus its limited resources on those chemicals which pose a significant risk to society. The Agency also considered an option of requiring a 5-day pre-manufacture notification. However, a 5-day period may not provide sufficient time to acknowledge that a submission has been received, raising inquiries from submitters as to official commencement dates.

In order to ensure that companies correctly determine which polymers meet the exemption criteria, the Agency is developing a comprehensive technical support document. This will assist the company to establish that the polymer meets the terms of the exemption.

C. Eligibility Criteria

1. *Functional group equivalent weight.* The Agency also considered the alternative of standardizing the criterion for certain reactive functional groups at § 723.250(e)(1)(ii)(B) at 5,000 equivalent weight instead of establishing both a 1,000 and a 5,000 limit based on the Agency's level of concern. Under the Agency's current internal review policy, polymers with a combined reactive functional group equivalent weight of greater than 5,000 are considered of low concern with respect to both health and environmental effects. While the concern for all of the listed reactive functional groups does not warrant this high 5,000 equivalent weight value, this approach would be a more straight forward threshold for the determination of eligibility for this exemption.

The group-specific values that EPA has proposed, however, correspond much better with the actual levels of concern for the individual reactive functional groups. By employing this method, the Agency feels it allows manufacturers the flexibility of producing more polymers which are of low risk without stringent requirements imposed for the sake of simplicity. The Agency solicits comment on the merits of both approaches. As stated above, the Agency is particularly interested in hearing from small businesses and others about the complicated nature of the first approach.

2. *Residual monomer content.* EPA also considered an option which would have retained the existing requirements that submitters provide such information as number average MW and residual monomer concentration. This requirement would enable EPA to evaluate on a random, periodic basis, information received in support of the certification that a submitter has met the specific exemption criteria for polymers, or to require more information in cases where the Agency may have some specific concerns or questions about the polymer. However, EPA believes that this reporting requirement would complicate the exemption scheme by placing an unnecessary burden on both EPA and submitter resources.

D. Inhalation toxicity

Inhalation concerns for high MW water-insoluble polymers are addressed in the criteria for polymer exemption and EPA is proposing to require that submitters certify that they acknowledge the concerns for inhalation toxicity for some water-insoluble polymers and will employ either worker protection or manufacturing controls to minimize exposure to respirable dust to the extent possible. Several alternatives have also been considered and EPA requests public comment and supporting data on the advantages and detriments of the options. The Agency solicits comments on the following alternatives:

1. *No restrictions on water-insoluble polymers with MW of 10,000 or greater.* EPA considered the alternative of not setting any restrictions on water-insoluble polymers with MW of 10,000 daltons or greater. The data base on polymer inhalation toxicity on water-insoluble polymers is extremely small; therefore it is difficult to characterize a limited data set as representative of all high MW polymers. To impose general regulatory restrictions based on a limited set of very specific data may not be justified. Further, there is a lack of test data on the specific factors which cause the toxicological effect. Without being able to identify the properties of a chemical(s) responsible for the toxic effect, it may be difficult to justify restrictions on the category of high MW polymers. The EPA would like to receive and/or encourage the development of data on the inhalation toxicity of higher MW polymers to establish the generality of the effect and the need for regulatory exposure limits under the polymer exemption.

Therefore, the EPA requests comment on the need to control exposure to water-insoluble polymers with MW of 10,000 daltons or greater in the polymer exemption rule. EPA also requests that any available negative inhalation toxicity data on higher MW polymers be forwarded to the Agency as part of public comment. Of course, persons must submit any positive data indicating "substantial risk" to human health or the environment under TSCA section 8(e).

2. *Promulgate a section 4 test rule for high MW polymers.* EPA considered the alternative of using other TSCA authority, e.g. a section 4 test rule, instead of limiting the exemption. The observed lung toxicity may be a physical effect, which to date, cannot be correlated with chemical-specific characteristics of any class of polymers, except water-absorbable polymers with MW of 1 million daltons or greater. EPA recognizes that PMN occurs on a chemical-specific basis and the lung toxicity caused by respirable dust may not be a chemical-specific phenomenon. Therefore, it is difficult for EPA to define a specific chemical category of concern or an appropriate test battery, at this time.

3. *Exclude polymers from eligibility for exemption if it is reasonably anticipated that there may be inhalation exposure in manufacturing, processing, or use.* Because the data received by EPA on inhalation toxicity are so limited and narrow of scope, and because EPA considered that the concerns could be mitigated by the exemption criteria discussed above, this alternative was considered to be an inappropriate burden relative to the magnitude of the known risk.

EPA requests comments on all alternatives considered in dealing with inhalation concerns along with any supporting data available on inhalation toxicity of polymers.

E. Polymers Containing High Cationic Functional Group

The Agency considered allowing, under the exemption, polymers which contain high percentages of amine (low amine equivalent weight) in their structures that would be restricted at §723.250(d)(1). The main concern for cationic polymers is for ecotoxicity, specifically, aquatic toxicity. There has been a significant amount of data collected to demonstrate that for the category of polymers with a high amine content, equivalent weight of 425 or less, there is sufficient mitigation of the risk, through the mechanism of humic acid binding, to render this polymer class of low concern for ecotoxicity. The Agency believes that these data sufficiently support the conclusion that high amine content polymers, as specified above, will not pose an environmental risk for aquatic toxicity.

EPA has, however, recently received data, through the provisions of section 8(e) of TSCA, with regard to toxicological studies performed on a polymer with high cationic functional group content. The test results demonstrated lethality in standard eye irritation tests in rabbits and has resulted in concerns for acute lethality as demonstrated by this polymer. The subject polymer met all provisions of the proposed polymer exemption and would have qualified for exemption if the low cationic functional group equivalent weight (high cationic content) provision was incorporated as part of the exemption criteria. It is for this reason that EPA feels that it would be inappropriate to include the high cationic functional group content allowance at this time. EPA is reviewing this category of polymers to attempt to delineate the parameters which may be responsible for this unusual effect. EPA requests any available standard rabbit eye irritation data on these types of polymers. EPA invites comment from the public on this class of polymers and the provisions in this rule for addressing them.

IV. Regulatory Analysis

A. Summary of Risk Assessment

1. *Introduction.* The Agency has decided to expand the applicability of the polymer exemption rule because EPA has determined that many of these substances are of low concern due to their lack of reactivity and their molecular size. The experience gained by the Agency from reviewing over 5,000 polymer submissions since the original polymer exemption rule in 1984 (49 FR 46066) has assisted in formulating the new set of criteria which will define what substances qualify for the polymer exemption. The hazards analysis for this proposed rule provides the evaluation of the information relevant to the Agency's conclusions that (a) polymers eligible for this exemption are generally of low risk and (b) sufficient information exists on the potential toxicity of polymers with certain characteristics to warrant their exclusion from the exemption.

2. *Approach to risk analysis.* The Agency based its risk analysis on (a) the effect MW has on the overall risk a chemical poses, (b) the specific concerns the Agency has had in the past from polymers submitted as PMNs, and (c) toxicological data available on particular chemicals.

The selection of MW as a risk-limiting criterion rests on two well-known and accepted principles of toxicology. The first principle is that, in general, in order to cause an adverse health or ecological effect, a chemical must first be absorbed by the organism. The second is that absorption of a chemical gradually decreases with increasing MW (size). Based on these two principles, the Agency reasoned that potential risks should generally be expected to decrease with increasing MW.

The second risk-limiting criterion is based on historical data gathered by the Agency in the course of reviewing several thousand polymers and identifying the concerns. This historical data gradually evolved into a set of internal Agency criteria for identifying either hazardous or high-risk substances. These internal criteria provide the basis for the proposed polymer exemption requirements that are set forth in this proposal.

3. *Limitations to approach.* The Agency realizes that there are limitations to the general rule that high MW substances will not be readily absorbed and therefore, will be of low concern. It is for these outlying cases that there are exclusions to this proposed exemption for certain polymers that remain subject to PMN. The Agency has reviewed a number of classes of chemicals to assess these risks. An EPA memorandum dated February 1, 1991, which discusses the environmental effects of polymers, is available in the public docket for this document (OPPTS–50594).

4. *Environmental risks.* The Agency has evaluated a large number of polymers for their ecotoxicity in the course of reviewing PMNs. The identified environmental risks have formed the basis for several of the exclusions from the exemption to mitigate these risks. The environmental risk posed by polymers in general can be categorized both by MW characteristics as well as electronic properties. All polymers are divided into four classes depending on the type of electronic charge of the polymer: nonionic (neutral); anionic (negative charge); cationic (positive charge); and amphoteric (mixture of positive and negative charges on same molecule) polymers. The risk these different categories may pose is related both to electronic charge and MW.

a. *Polymers with MW less than 1,000 daltons.* Polymers with a MW of less than 1,000 that possess some degree of water solubility may be of concern. These polymers tend to exhibit much of the same behavior as polymers whose MW is greater than 1,000. These polymers are also of concern due to their potential to be absorbed through biological membranes and cause systemic effects.

b. *Polymers with MW greater than 1,000 daltons.* Polymers with MW greater than 1,000 are only considered a hazard for ecotoxicity when they are water soluble (or self-dispersing). They are not expected to be absorbed through biological membranes, and are expected to assert their toxicity by affecting the outer membranes of aquatic organisms or the near environment of the organism (e.g., over-chelation of nutrient elements). Insoluble polymers are not expected to be toxic unless they are ground up into fine particles. The toxicity of finely ground particles is due to indirect (physical) toxicity (e.g., the clogging of respiratory organs such as gills). Effects of this type only occur at high concentrations, i.e., acute toxicity values of greater than 1000.0 mg/L and chronic toxicity values of greater than 50.0 mg/L. The toxicity of finely ground insoluble polymers does not depend upon the chemical structure of the polymer.

i. *Anionic (negatively charged) polymers.* Polyanionic polymers which have a MW greater than 1,000 and which are water soluble (miscible or self-dispersing) are of concern for aquatic toxicity. Polyanionic polymers are divided into three subclasses: poly(carboxylic acids), poly(aromatic sulfonates), and poly(aliphatic sulfonates).

Poly(carboxylic acids) are of concern only for their toxicity to green algae. Toxicity to algae is moderate with toxicity values ranging from 1 to 100 mg/L (ppm). It appears that the mode of toxic action of these poly(carboxylic acids) is over-chelation of nutrient elements needed by algae for growth. When enough calcium (as divalent cation) is added to a polymer to satisfy

its anionic charges, toxicity to algae is mitigated.

Poly(aromatic sulfonate) polymers with MW greater than 1,000 may be of moderate concern for acute toxicity towards fish and green algae. Polymers in this class have the following characteristic monomers: sulfonated phenols, sulfonated cresols, sulfonated diphenolsulfones, sulfonated diphenyloxides, and sulfonated diphenylsulfones.

Poly(aromatic sulfonate) polymers which have been shown to have low toxicity (i.e., acute toxicity values greater than 100.0 mg/L) or are highly suspected of having low toxicity are composed of the following monomers: benzene sulfonates and sulfonated naphthalene. The Agency does not have enough test data for these polymers to draw any firm conclusions about their toxicity. However, it is suspected that if these polymers show toxicity to aquatic organisms it will be to algae as was observed for the poly(carboxylic acid) polymers.

ii. *Polycationic (positively charged) polymers.* Polycationic polymers include polyamines (primary amines, secondary amines, and tertiary amines); quaternary amines; polysulfoniums; and polyphosphoniums. Polymers which are considered to have the potential for environmental toxicity have MW greater than 1,000 and are water soluble (miscible or self-dispersing). Polymers based on polyglucosamines (i.e., chitosan) are much less toxic than predicted and are no longer of concern.

For polycationic polymers, aquatic toxicity in clean water (i.e., total organic carbon [TOC] < 2 mg/L) increases exponentially with increasing cationic charge density, i.e., protonated and/or quaternarized-N, S or P. Charge density is measured as percent amine-N for nitrogen-based polymers, equivalent weight of N, S, or P, or number of cations per 1,000 MW. Toxicity to aquatic organisms increases exponentially until about 2.5 cations per 1,000 MW (or 3.5 percent amine-nitrogen or an equivalent weight = 400), thereafter, toxicity becomes asymptotic.

5. *Inhalation toxicity.* Health concerns exist for certain types of high MW polymers that have been found to produce lung toxicity if inhaled. The Agency has received several TSCA section 8(e) and other submissions that report irreversible lung damage in experimental animals when respirable size polymer aerosols are inhaled. The data also demonstrated that the onset of the polymer-induced damage may be delayed for as long as 6 months after exposure. Observed toxicity may be a result of "overloading" the clearance mechanisms of the lung; however, at this time the Agency does not have sufficient toxicity data to either confirm or discount the "overload" theory. The Agency does not have sufficient data to determine the precise MW and/or structural considerations that may facilitate the mechanisms causing toxicity, although data received indicate that lung toxicity is produced by certain polymers with MW as low as 70,000 and at respirable concentrations as low as 4 mg/m^3.

The Agency is considering how to deal with potential lung effects in the context of the polymer exemption. Because the 1984 polymer exemption criteria, and the criteria now being considered, are based on structural and compositional characteristics of polymers, it would be difficult or impossible to address concerns for the observed lung effects within the scope of these criteria.

Accordingly, EPA is proposing to require manufactures to provide notice of potential risks and also is proposing a revocation procedure, as described more fully in Unit II of this preamble.

B. Summary of Regulatory Impact Analysis

EPA has evaluated the potential costs of the proposed amendments for potential submitters of section 5 exemption notices. The Agency's complete economic analysis is available in the public record for this proposed rule (OPPTS–50594).

The regulatory impact analysis estimates the costs and benefits attributable to the proposed regulation. In this case, the analysis also contains estimates for the three additional proposed amendments to section 5 regulations that are published elsewhere in this **Federal Register**. These proposals would amend the PMN rule, the Low Volume Exemption Rule, and the Expedited Follow-up rule. As these proposed regulations are amendments to current regulations, the costs and benefits are incremental, estimating the effect of the proposal with respect to the current regulation.

The costs and benefits associated with these proposed amendments are partially quantified; many of the benefits are unquantified but are expected to be of significant importance. Considering only the quantified costs and benefits, there is a cost savings. Since the number of section 5 submissions received by the Agency varies, this analysis used three scenarios, assuming either 1,000, 2,000, or 3,000 annual submissions, to reflect the expected range of submissions. The savings as compared to the current regulation are estimated to be:

Annual Number of Submissions	Annual Cost Savings ($ Million)	
	Industry	Government
1,000	3.7–5.6	1.0–1.3
2,000	7.4–11.2	2.1–2.6
3,000	11.1–16.8	3.1–3.9

The industry costs associated with these amendments are reporting costs, delay costs, and a user fee. Reporting costs are reduced from the current situation due to a reduction in submission requirements. Delay costs, defined as the cost of delayed introduction of the substance into the market due to section 5 regulations, are also reduced due to the elimination of the 21–day pre-manufacture notification requirement. The user fee remains the same. In addition, the amendment makes a larger number of polymers eligible for the exemption, further reducing the reporting and delay costs for those substances.

The unquantified benefits include increased flexibility for industry due to the expanded exemption criteria. The amendments would require workplace controls for those polymers likely to pose a respirable health risk, allowing the submitter to utilize pollution prevention techniques and protect the health of their workers without the delay and effort required for a section 5(e) Order.

C. EPA's Approach to Making the No Unreasonable Risk Finding

1. *Statutory background.* Under section 5(h)(4) of TSCA, EPA is authorized to exempt the manufacturer of any new chemical substance from all or part of the requirements of section 5 if EPA determines that the manufacture, processing, distribution in commerce, use, and disposal of the substance, or any combination of such activities, will not present an unreasonable risk of injury to health or the environment. Section 26(c) of TSCA provides that any action authorized under TSCA for an individual chemical may be taken for a category of such substances.

While TSCA does not contain a definition of "unreasonable risk," the legislative history indicates that the determination of unreasonable risk requires a balancing of the considerations of both the severity and the probability that harm will occur against the effect of the proposed regulatory action on the availability to society of the benefits of the chemical substance [H.R. 1341, 94th Cong., 2nd Session, 14 (1976)]. This analysis can include an estimate of factors such as market potential, the effect of the

regulation on promoting or hindering the economic appeal of a substance, environmental effects, and many other factors which are difficult to define and quantify precisely. EPA must rely not only on data available to it, but also on its professional judgment. Congress recognized that the implementation of the unreasonable risk standard "will vary on the specific regulatory authority which the Administrator seeks to exercise" [Ibid.].

2. *EPA's approach.* In determining whether the category of substances manufactured under the exemption presents an unreasonable risk of injury to human health or the environment, the Agency considers more than just the inherent risks presented by the overall category of polymers. The Agency also considers the extent to which specific, automatic exclusions for polymers having certain characteristics affect the risks as well as the degree to which the development of specific polymeric criteria, have mitigated such potential risks. EPA analyzes to what extent the exemption criteria diminish or address potential risk.

The proposed polymer exemption will modify the requirements for eligible polymers from the current polymer exemption requirements and the general PMN requirements. EPA therefore compares the risks posed by the exemption with the risks which would have resulted from the same category of substances, if that category of substances had been subject to full notice submission requirements and 90-day EPA review or, where applicable, the reporting requirements of the current polymer exemption and the abbreviated 21-day review. Certainly it is not possible to eliminate all risks associated with the manufacture, processing, use, and disposal of a new chemical substance nor was this Congress' intent.

3. *Application of no unreasonable risk factors.* The following is an explanation of the consideration of factors relevant to the no unreasonable risk finding. The design of the proposed polymer exemption together with intrinsic properties of polymers significantly limit the risks of injury to human health or the environment that exempt polymers may present. Polymers as a general class are relatively unreactive and are not easily absorbed by bodily tissue. This proposal would exclude from eligibility, polymers with characteristics which would cast significant doubt on EPA's conclusions regarding low toxicity. EPA's conclusions regarding low toxicity potential for polymers that meet the proposed criteria are supported by the available data as well as EPA's professional judgement gathered over the course of reviewing over 10,000 polymers under the PMN and current polymer exemption requirements.

Under the proposed rule, certain polymers would be automatically ineligible for the polymer exemption. EPA has excluded those polymers for which: (a) The Agency still has insufficient data and review experience to find that they will not present an unreasonable risk, or (b) the Agency has found that, under certain conditions, polymers may present risk, thereby requiring a closer examination of the conditions of manufacturing, processing, distribution, use, and disposal during a full 90-day PMN review. This level of analysis would be necessary to make an appropriate determination about risk.

In 1982, when the Risk Analysis and Evaluation of PMN Regulatory Decisions for Polymers was performed for the original polymer rule, the Agency determined that high MW (MW) polymers containing small amounts of low MW species were not considered an unreasonable risk to humans or the environment. Extensive discussion on this topic can be found in the 1982 proposed polymer exemption rule and the preamble to the final rule promulgated in 1984. The Agency has assumed that monomers would be of greater concern than oligomers, and that oligomers would be of greater concern than polymers based on the probability that the monomer would be more readily absorbed and, on a weight basis, be more reactive than the resulting oligomer or polymer.

In the 1982 proposal, the Agency proposed to allow polymers with MW greater than 20,000 to be manufactured without any premanufacture review by EPA but determined in the final rule that an abbreviated review period was necessary due to concerns for unreacted monomers and low MW species. The Agency is now proposing a modified version of this option, based on the review and hazard assessment of PMN polymers received over the last 7 years. The Agency now believes that it has sufficient experience with high MW polymers such that a "no unreasonable risk" finding may be made for certain of these substances.

As part of its risk assessment and in determining which type of polymer would be the most appropriate subject of an exemption at that time, EPA analyzed its existing database of polymers which had been submitted as full PMNs. Of the 266 polymer PMNs received by the Agency between March 17 and December 31, 1981, 7 were subject to preliminary review and none received formal Agency regulation under section 5(e) or section 5(f) of TSCA. These 266 polymers constitute a significant percentage of the 553 PMNs received during this period. In addition, of the 13 polymer PMNs that would have been eligible for review under the then proposed exemption, 11 were dropped by the Agency after abbreviated review on the basis of chemical/physical property data.

Over the past 13 years, the Agency has reviewed approximately 10,000 polymers in the New Chemicals Program. (Approximately 50 percent of all PMNs are polymers.) Of these 10,000, the majority of the polymers that would have qualified for the proposed polymer exemption rule have consistently been characterized as posing low concern for both adverse health and environmental effects by the Agency. The characteristics of a significant number of polymers are such that they are either not absorbed by biological systems or do not interact with biological systems. Furthermore, these polymers do not degrade to toxic species in the environment. However, based on data received by the Agency and referenced above, there is a second category of polymers which may pose a risk which the Agency believes can nonetheless be controlled through the use of process changes, engineering controls or use of personal protective equipment.

As a class, the Agency considers polymers to be among the safest chemical substances known. Based on over 13 years experience with the review and evaluation of new polymers, the Agency has established specific criteria which define low-risk polymeric substances. For example, the low MW species, reactive functional group, and the cationic limitations serve as such criteria. Many of these proposed criteria are outgrowths of the criteria used to determine eligibility under the current polymer exemption that has been in effect since 1984. Further, the Agency uses these identical criteria to identify low-risk polymers in its PMN review process.

The current polymer exemption, which uses the same types of criteria as the proposed exemption criteria to determine eligibility, requires a 21-day review period. The Agency believes that this review period for polymers that meet the proposed exemption criteria is unnecessary based on EPA's finding that polymers which meet these exemption criteria put a sufficient bound on risk so that EPA review would not result in any additional protection. As a result, the Agency can then refocus its limited

resources from this category of low risk concerns to those chemicals which, by comparison, may pose a considerable risk to society. Of the 1,371 polymers reviewed under the existing polymer exemption, only 1 polymer raised a concern of unreasonable risk based on ecotoxicity concern for significant releases; however, the case was dropped from review after receipt of algal test results which mitigated the Agency's concerns.

To further characterize the risk of the polymers that would be eligible for the proposed polymer exemption, the database of TSCA section 8(e)/FYI submissions was reviewed. Section 8(e) of TSCA requires that information on chemical substances which present a substantial risk of injury to human health or the environment be submitted to the Agency. A review of approximately 1,300 section 8(e) submissions revealed that, while polymers were the subject of 72 submissions, only 4 of the chemical substances identified in these 8(e) submissions would have been eligible for today's proposed polymer exemption (assuming the proposed worker protection provisions were not taken into consideration). The remaining 68 would be excluded from the proposed exemption due to MW considerations, restricted constituents and/or an excess amount below the MW of 500 or 1,000.

As discussed in Unit II of this preamble, the data received by the Agency on the six referenced submissions indicate that inhalation of respirable particles of certain of these polymers resulted in irreversible lung damage to experimental animals. In response to these new data, the Agency convened a Workshop to analyze the data to characterize the toxicity and chemical structures which may be responsible for the reported toxicity. The proceedings of the workshop are available in the Public Docket at OPPTS-50594.

Based on the small size of this data set and the uncertainty of the cause of identified effects, the Agency is not willing at this time to draw any broad scientific conclusions for a class of compounds that numbers well over the 30,000 currently listed on the TSCA Inventory. As discussed in Unit II of this preamble, the Agency is proposing to exclude from the exemption, polymers having MW of 10,000 daltons or greater that are water-absorbing in response to TSCA section 8(e) data received by EPA. In addition, under the proposal, procedural safeguards to control inhalation exposure would be imposed on water-insoluble polymers having MW of 10,000 or greater if there is a potential for inhalation exposure to respirable particles. Chemicals other than these polymers which cause similar effects are generally insoluble particles of inorganic materials, such as titanium dioxide, which have no obvious chemical similarity to the subject polymers. However, if there is a potential for inhalation exposure to any respirable particles of water-insoluble polymers of MW greater than or equal to 10,000 daltons, the Agency believes it cannot make an affirmative finding that the activities associated with eligible polymers will not present an unreasonable risk of injury to human health and the environment unless respiratory protection or other workplace controls are used.

4. *Mitigation of potential risks.* In order to mitigate potential risks if the potential for inhalation exposure exists, the Agency has determined that: (a) By requiring manufacturers and importers to notify persons in its employ of the potential inhalation toxicity of respirable particles; (b) by requiring exposed workers to use respirators in accordance with applicable OSHA and National Institute for Occupational Safety and Health (NIOSH) requirements, or, in the alternative, by maintaining a specified workplace inhalation exposure level; (c) by requiring subsequent risk notification to processors and industrial users; (d) inclusion of strong revocation procedures; and (e) by the exclusions and terms of the exemption itself, the "no unreasonable risk" finding can in fact be made on a classwide basis for purposes of this exemption. These provisions are more fully described in Unit II of this preamble. The Agency believes that the exclusions and conditions are sufficient to mitigate risk, particularly when compared to the benefits, in toto, of encouraging further development of comparatively lower risk classes of chemicals with significant consumer exposure, such as polymers.

Because of the safeguards in the proposed rule, the requirement that the information provided in submissions are binding on the submitter, and the restricted nature of the exemption categories, EPA believes that risks are not likely to be any greater than if PMNs are filed and reviewed by EPA. Furthermore, the new polymers provide benefits to industry and to the public, which comprise an important element in the finding of no unreasonable risk.

In addition to the exclusions described in the proposed rule, the Agency in § 723.250(e)(2) is proposing the adoption of notification requirements which are similar to provisions in the R&D exemption at § 720.36(c) if there is potential inhalation exposure to respirable particles of high MW water-insoluble polymers. These would include notification of risks related to inhalation concerns raised by section 8(e) data, by the manufacturer of the exempt polymer [see 40 CFR 720.36 and 720.78]. The rule would require manufacturers to evaluate information which would lead the manufacturer to believe there is a potential risk of inhalation exposure to the substance based on respirable particulates, and would require the manufacturer to notify employees and persons to whom the polymer is distributed of any risk identified during the review. Such notification would help to address the concerns raised by the section 8(e) data which indicated irreversible lung damage in experimental animals.

At the present time, a 2-year chronic inhalation bioassay would be recommended to fully evaluate the potential for lung toxicity from exposure to high MW polymers. The Agency encourages manufacturers and importers to develop and conduct appropriate toxicity testing to determine the lung toxicity from inhalation exposure to respirable polymer dusts. The docket for the proposed rule details the concerns for inhalation toxicity and raises awareness regarding the potential inhalation risks associated with certain polymers. The Agency is attempting to address the concerns raised by the section 8(e) data regarding inhalation toxicity in the proposed rule and in the PMN program. If EPA determines in the future that concerns for these polymers are mitigated or modified, it will consider revising the exemption to either delete or modify the workplace control limitations currently in the proposed rule, as appropriate, and consistent with its statutory mandate to make a "no unreasonable risk" finding.

The Agency believes that notification through labeling; notice where actual exposure is expected to occur; individual written notice or use of any other method which adequately informs persons of potential inhalation risk which EPA has reason to believe may be associated with the substance; will mitigate risk to potentially exposed populations, thereby enabling EPA to make the necessary no unreasonable risk finding.

Despite the low risk generally associated with the types of polymers that would qualify for this exemption, EPA recognizes that as the scientific community, and EPA, gain a better understanding of these substances and the potential risks associated with them,

new risks may be identified. Although EPA does not currently have any information indicating that any particular polymers or categories of polymers that meet the proposed criteria for this exemption may present an unreasonable risk, it is possible that in the future EPA will obtain such information. To minimize any potential risks posed by this exemption, EPA is proposing a provision in this polymer exemption rule that would enable EPA to revoke exemptions where EPA obtains information indicating that a particular polymer or category of polymers may present an unreasonable risk of injury to health or the environment.

The Agency has proposed revocation language in the polymer exemption which would allow EPA to revoke the exemption for an exempted polymer and require a full PMN review, should the Agency obtain new information that identifies a hazard that results in a "may present" an unreasonable risk finding. Such a determination could be based on any new information, or when the body of toxicity data permits a sound scientific judgment regarding the mechanisms of lung toxicity or the structural guidelines for the toxicity referenced above.

If a polymer were eligible for the proposed polymer exemption, the polymer would not be listed on the Inventory, thereby precluding manufacture by any one other than the company submitting the exemption notice. Furthermore, based on information received on the substance itself, or analog data, the exemption status could be revoked at any time if information becomes available which results in a finding that the polymer may present an unreasonable risk to human health or the environment.

5. *Benefits.* The following discussion describes the benefits of this proposal in a qualitative manner; for a more quantitative approach, see the economic analysis discussion in Unit IV.B of this preamble. It is reasonable to assume that a newly developed polymer will either possess a new function or serve an existing function more efficiently or less expensively. The reduction in delay for that polymer to be introduced into commerce is a benefit to both manufacturers and the general public, who will have access to the substance in a more timely manner.

A consideration of which benefits to analyze would encompass more than the costs associated with or from having to submit the polymer as a full PMN. Rather, any benefit analysis undertaken by the Agency would include a consideration of the broader benefits of reduction of costs to society by providing a less burdensome alternative for polymer manufacturers, including a reduction in the burden associated with both full PMN and current polymer exemption requirements. EPA's unreasonable risk determination may be based on the effects from provision of the substances on society beyond those benefits attributable to the substance itself.

Some of the costs directly attributable to the substance include the preparation of the PMN or polymer exemption form as well as the delay in the commercial market introduction of the new chemical substance. On the other hand, there are broad societal benefits which are not directly attributable to any one chemical substance or category of substances. Such benefits would include a reduction in Agency review resources being dedicated to a category of compounds determined to be of low risk, and a concomitant shift in concentration of those resources to substances of greater known concern. While factors such as these are not of the type that EPA would take into account when making an individual control decision on a new chemical substance, they have a significant effect on society which is directly linked to EPA's exercise of its exemption authority, and are appropriately considered in a section 5(h)(4) unreasonable risk finding for a category of substances. The costs of reporting requirements will also be lessened due to the limited informational requirements imposed under the proposed polymer exemption. These savings are detailed in the Regulatory Impact Analysis report which is available in the public docket for this rulemaking (docket control number OPPTS-50594).

In addition, if the exemption is used to its greatest advantage, more than 31 percent of the resources allocated to the PMN burden could be shifted from this category of low concern to those chemicals which are considered to pose a considerably greater risk to society by comparison. Finally, manufacturers of these polymeric substances will be given greater flexibility provided they meet the terms of the criteria of the exemption.

In view of the expansive and continually increasing use of polymers in commerce, encouraging industry to expand the use of low hazard polymers can result in significant benefits to society. In general, such low hazard polymers function as replacements for heavy metals, many of which can cause detrimental human health effects to multiple organ systems as well as permanently contaminating the ecosystem with subsequent damage to the flora and fauna. The benefit of encouraging low hazard chemical substances in place of known hazards touch on all aspects of human activity and the environment including less hazardous work place environments, safer products available for the consumer, and materials that will not decompose to toxic products in the disposal sites. Such benefits outweigh risks which may be associated with inhalation of an as yet undefined subset of polymers, taking into consideration the exposure controls included in this proposal.

6. *Risk/benefit balance.* Determining the presence or absence of an unreasonable risk requires balancing of the benefits and risks posed by a regulatory action. EPA has determined that the risks are low based on the inherent properties of this class of substances; the additional safeguards built into the eligibility criteria; and the exposure controls included to mitigate any risks. EPA, of course recognizes its authority to revoke any exemption when and if information becomes available to it which would warrant such action.

EPA believes that the benefits of this proposed action are quite significant. Promoting the development of this category of polymeric substances by reducing the regulatory burden in both reporting requirements and in eliminating the delay of these products into commerce will have clear benefits to society. The added benefit of concentrating limited resources on substances which have a greater potential to present significant risks rather than a category such as polymers which have a minimal potential for significant risk is difficult to quantify, but is considered substantial nonetheless.

Given the above analysis, EPA concludes that the polymers covered by the proposed revision of the polymer exemption rule will not present an unreasonable risk of injury to human health or the environment.

V. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential

must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

VI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50594). The record includes basic information considered by the Agency in developing this proposed rule. A public version of the record without any confidential information is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located at EPA Headquarters in Rm. NE–G004, 401 M St., SW., Washington, DC.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the polymer exception notice submitters were small firms. They will have reduced burdens compared to the PMN process and the existing exemption.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et. seq. and have been assigned OMB control number 2070–0012.

The public reporting burden for this collection of information is estimated to vary from 10 to 14 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The public reporting burden for a PMN submission is estimated to vary from 95 to 110 hours; the burden for the 1984 polymer exemption is estimated to vary from 29.5 to 40 hours.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 723

Chemicals, Environmental protection, Hazardous materials, Premanufacture notification, Reporting and recordkeeping requirements.

Dated: January 19, 1993.

William K. Reilly,
Administrator.

Therefore, 40 CFR chapter I, subchapter R, part 723 is proposed to be amended as follows:

PART 723—[AMENDED]

1. The authority citation for part 723 would continue to read as follows:

Authority: 15 U.S.C. 2604

2. By revising § 723.250 to read as follows:

§ 723.250 Polymers.

(a) *Purpose and scope.* (1) This section grants an exemption from certain of the premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture of certain polymers.

(2) To manufacture a new chemical substance under the terms of this section, a manufacturer must:

(i) Determine that the substance meets the definition of polymer in paragraph (b) of this section.

(ii) Determine that the substance is not specifically excluded by paragraph (d) of this section.

(iii) Ensure that the substance meets the exemption criteria of paragraph (e) of this section.

(iv) Submit a notice as required under paragraph (f) of this section.

(v) Comply with the recordkeeping requirements of paragraph (l) of this section.

(b) *Definitions.* In addition to the definitions under section 3 of the Act, 15 U.S.C. 2602, the following definitions apply to this part.

Act means the Toxic Substances Control Act (115 U.S.C. 2601 et seq.).

Biopolymer means a polymer directly produced by living or once-living cells or cellular components.

Category of chemical substances has the same meaning as in section 26(c)(2) of the Act (15 U.S.C. 2625).

Cationic polymer means a polymer that contains a net positively charged atom(s) or associated groups of atoms covalently linked to its polymer molecule.

Chemical substance, Director, EPA, importer, impurity, Inventory, known to or reasonably ascertainable, manufacture, manufacturer, mixture, new chemical, person, possession or control, process and test data have the same meanings as in § 720.3 of this chapter.

Internal monomer unit means a monomer unit that is covalently bonded to at least two other monomer units. Internal monomer units of polymer molecules are chemically derived from monomer molecules that have formed covalent bonds between two or more other monomer molecules.

Monomer means a chemical substance that has the capacity to form chemical bonds between two or more other molecules.

Monomer Unit means the reacted form of the monomer in a polymer bonded to two or more other molecules.

Number-average molecular weight means the arithmetic average (mean) of the molecular weight of all molecules in a polymer.

Polyester means a chemical substance that meets the definition of polymer and whose polymer molecules contain at least two carboxylic acid ester linkages, at least one of which links internal monomer units together.

Polymer means a chemical substance consisting of molecules characterized by the sequence of one or more types of monomer units and comprising a simple weight majority of molecules containing at least 3 monomer units which are covalently bound to at least one other monomer unit or other reactant and which consists of less than a simple weight majority of molecules of the same molecular weight. Such molecules must be distributed over a range of molecular weights wherein differences in the molecular weight are primarily attributable to differences in the number of monomer units.

Polymer molecule means a molecule which includes at least 3 covalently bound monomer units, at least two of which are internal monomer units.

Reactant means a chemical substance that is used intentionally in the manufacture of a polymer to become

chemically a part of the polymer composition.

Reactive functional group means an atom or associated group of atoms in a chemical substance that is intended or can reasonably be anticipated to undergo facile chemical reaction.

Reasonably anticipated means that a knowledgeable person would expect a given physical or chemical composition or characteristic to occur based on such factors as the nature of the precursors used to manufacture the polymer, the type of reaction, the type of manufacturing process, the products produced in polymerization, the intended uses of the substance, or associated use conditions.

(c) *Applicability.* This section applies to manufacturers of new chemical substances that otherwise must submit a premanufacture notice to EPA under § 720.22 of this chapter. New substances are eligible for exemption under this section if they meet the definition of "polymer" in paragraph (b) of this section, and the criteria in paragraph (e) of this section, and if they are not excluded from the exemption under paragraph (d) of this section.

(d) *Polymers that cannot be manufactured under this section*— (1) *Cationic polymers.* A polymer cannot be manufactured under this section if the polymer is a cationic polymer as defined under paragraph (b) of this section or if the polymer is reasonably anticipated to become a cationic polymer in a natural aquatic environment (e.g., rivers, lakes) unless:

(i) The polymer is a solid material that is not soluble or dispersible in water and will be used only in the solid phase (for example, polymers that will be used as ion exchange beads), or

(ii) The combined functional group equivalent weight of cationic groups in the polymer is equal to or greater than 5,000.

(2) *Elemental limitations.* (i) A polymer manufactured under this section must contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

(ii) A polymer cannot be manufactured under this section if it contains as an integral part of its composition, except as impurities, any elements other than the following:

(A) The elements listed in paragraph (d)(2)(i) of this section.

(B) Sodium, magnesium, aluminum, potassium, calcium, chlorine, bromine, and iodine as the monatomic counterions Na+, Mg+2, Al+3, K+, Ca+2, Cl-, Br-, or I-.

(C) Fluorine, chlorine, bromine, and iodine covalently bound to carbon.

(D) Less than 0.20 weight percent of any combination of the atomic elements lithium, boron, phosphorus, titanium, manganese, iron, nickel, copper, zinc, tin, and zirconium.

(3) *Polymers which degrade, decompose, or depolymerize.* A polymer cannot be manufactured under this section if the polymer is designed or is reasonably anticipated to substantially degrade, decompose, or depolymerize.

(4) *Polymers manufactured or imported from monomers and reactants not on the TSCA Chemical Substance Inventory.* A polymer cannot be manufactured under this section if the polymer being manufactured or imported comprises monomers and/or other reactants not already included on the TSCA Chemical Substance Inventory.

(5) *Water absorbing polymers with number average molecular weight (MW) 10,000 and greater.* A polymer cannot be manufactured under this section if the polymer being manufactured or imported is considered a water absorbing polymer and has a number average MW greater than or equal to 10,000. A water-absorbing polymer is a polymeric substance that, either in whole or in part, increases its volume when in contact with water. A polymer that is partially water soluble and partially water-absorbing shall be considered water-absorbing for the purposes of this section.

(e) *Exemption criteria.* To be manufactured under this section, the polymer must meet one of the following criteria:

(1) *Polymers with number average MW greater than or equal to 1,000 and less than 10,000 (and oligomer content less than 10 percent below MW 500 and less than 25 percent below MW 1,000).* (i) The polymer must have a number average MW greater than or equal to 1,000 and less than 10,000 and contain less than 10 percent oligomeric material below MW 500 and less than 25 percent oligomeric material below MW 1,000.

(ii) A polymer cannot be manufactured under this paragraph if the polymer contains reactive functional groups that are intended or reasonably anticipated to undergo further reaction unless it meets one of the following criteria:

(A) The polymer contains no or only the following reactive functional groups: carboxylic acid groups, aliphatic hydroxyl groups, unconjugated olefinic groups that are considered "ordinary", butenedioic acid groups, those conjugated olefinic groups contained in naturally-occurring fats, oils, and carboxylic acids, blocked isocyanates (including ketoxime-blocked isocyanates), thiols, unconjugated nitrile groups, and halogens (except that reactive halogen-containing groups such as benzylic or allylic halides would not be included).

(B) The polymer has a combined reactive group equivalent weight greater than or equal to 1,000 for the following reactive functional groups: acid halides; acid anhydrides; aldehydes, hemiacetals; methylolamides, - amines or, - ureas; < C2 alkoxysilanes; allyl ethers; conjugated olefins; cyanates; epoxides; imines; or unsubstituted positions *ortho* or *para* to phenolic hydroxyl.

(C) If any reactive functional groups not included in paragraph (e)(1)(ii)(A) or (B) of this section are present, the combined reactive group equivalent weight, including any groups listed in paragraph (e)(1)(ii)(B), must be greater than or equal to 5,000.

(2) *Polymers with number average MW greater than or equal to 10,000 (and oligomer content less than 2 percent below MW 500 and less than 5 percent below MW 1,000).* The polymer must have a number average MW greater than or equal to 10,000 and contain less than 2 percent oligomeric material below MW 500 and less than 5 percent oligomeric material below MW 1000. In addition, for all water insoluble polymers greater than or equal to 10,000 MW to be manufactured under the terms of this section, the manufacturer must:

(i) Notify persons in its employ of the following if there is a potential for their inhalation exposure to any respirable particulates of the substance as identified under paragraph (e)(2)(ii) of this section:

(A) The potential for harmful lung effects upon inhalation of respirable particulates of the substance.

(B) The requirements of paragraph (e)(2)(iv) of this section. The notification must be in accordance with paragraph (e)(2)(iii) of this section.

(ii) Evaluate the potential for inhalation exposure to any respirable particulates of this substance.

(iii) Notify each person in its employ that may be potentially exposed to any respirable particulates of this substance by means of a container labeling system, conspicuous placement of notices in areas where exposure may occur, written notification, or any other form of notification which adequately informs persons of the potential inhalation exposure as determined under paragraph (e)(2)(ii) of this section, the potential for harmful lung effects upon inhalation of respirable particulates of the substance, and the requirements of paragraph (e)(2)(iv) of this section.

(iv) Provide to, and require to wear, each person in its employ that may be potentially exposed to any respirable particulates of the substance the following respiratory protection:

(A) At a minimum, a Category 21C or 23C respirator equipped with a high efficiency filter, selected in accordance with the National Institute for Occupational Safety and Health (NIOSH) Respirator Decision Logic (DHHS/NIOSH Publication No. 87–108 or current version) and used in accordance with 29 CFR 1910.134 and 30 CFR part 11. Respirators shall be selected such that employee exposure to respirable dust, mist, or aerosol of this substance via inhalation does not exceed 0.5 mg/m^3 in any 8–hour work shift of a 40–hour work week.

(B) Employees are not required to wear respirators if alternate controls in the workplace are provided so that inhalation exposure to respirable dust, mist, or aerosol of the new chemical substance in the workplace during manufacture, processing, and use does not exceed 0.5 mg/m^3 in any 8–hour work shift of a 40–hour work week. Process changes, work practices, good housekeeping, and maintenance practices can effectively reduce exposure to airborne respirable polymer materials. Examples of process changes that can reduce exposure include using the substance in solution, in pellet form, or as a wet cake. Application methods other than spray applications that can reduce airborne respirable exposures include roller coating, dip coating, etc. Good housekeeping may include such practices as wet mopping or vacuuming spills instead of dry sweeping and the repair of leaks as soon as possible.

(v) Provide in writing to processors and industrial users to whom it directly distributes the polymer a notice of potential inhalation exposure to any respirable particulates of the substance if such a determination is made in accordance with paragraph (e)(2)(ii) of this section and the potential for harmful lung effects upon inhalation of respirable particulates of the substance. The manufacturer must also inform processors and industrial users of respirator or alternate workplace controls specified in paragraph (e)(2)(iv) of this section so that inhalation exposure to respirable dust, mist, or aerosol of the new substance in the workplace during processing or use does not exceed 0.5 mg/m^3 in any 8–hour work shift of a 40–hour work week. The manufacturer may notify processors and industrial users by means of a container labeling system, written notification, material safety data sheet, or any other method that adequately informs them of inhalation exposure potential to any respirable particulates of the substance, the potential for harmful lung effects upon exposure to respirable particulates of the substance, and the use of respirator or alternate workplace controls. If the manufacturer learns that a customer is processing or using the substance in violation of prescribed respirator or alternate workplace controls, the manufacturer must cease distribution of the substance to the customer immediately. The manufacturer must also report this action to EPA within 15 working days of receipt of this information under paragraph (i) of this section.

(3) *Polyester polymers.* The polymer is a polyester as defined in paragraph (b) of this section and is manufactured solely from one or more of the reactants in the following Table 1:

TABLE 1.— LIST OF REACTANTS FROM WHICH POLYESTER MAY BE MADE

Reactant	CAS No.
Monobasic Acids and Natural Oils	
Benzoic acid	65–85–0
Coconut oil	[1]8001–31–8
Corn oil	[1]8001–30–7
Cottonseed oil	[1]8001–29–4
Dodecanoic acid	143–07–7
Fatty acids, coco	[1]61788–47–4
Fatty acids, linseed oil	[1]68424–45–3
Fatty acids, safflower oil	
Fatty acids, soya	[1]68308–53–2
Fatty acids, sunflower oil	[1]84625–38–7
Fatty acids, tall-oil	[1]61790–12–3
Fatty acids, tall-oil, conjugated	
Fatty acids, vegetable oil	[1]61788–66–7
Heptanoic acid	111–14–8
Hexanoic acid	142–62–1
Hexanoic acid, 3,3,5-trimethyl-	3302–10–1
Linseed oil	[1]8001–26–1
Nonanoic acid	112–05–0
Oils, Cannabis	
Oils, anchovy	
Oils, babassu palm	
Oils, herring	[1]68153–06–0
Oils, menhaden	[1]8002–50–4
Oils, oiticica	[1]8016–35–1
Oils, palm kernel	[1]8023–79–8
Oils, perilla	[1]68132–21–8
Oils, walnut	[1]8024–09–7
Oils, sardine	
Safflower oil	[1]8001–23–8
Soybean oil	[1]8001–22–7
Sunflower oil	[1]8001–21–6
Tung oil	[1]8001–20–5
Di and Tri Basic Acids:	
1,2-Benzenedicarboxylic acid	88–99–3
1,3-Benzenedicarboxylic acid	121–91–5
1,4-Benzenedicarboxylic acid	100–21–0
1,2,4-Benzenetricarboxylic acid	528–44–9
Butanedioic acid	110–15–6
2-Butenedioic acid (E)	110–17–8

TABLE 1.— LIST OF REACTANTS FROM WHICH POLYESTER MAY BE MADE—Continued

Reactant	CAS No.
Decanedioic acid	111-20-6
Hexanedioic acid	124-04-9
Nonanedioic acid	123-99-9
Polyols	
1,3-Butanediol	107-88-0
1,4-Butanediol	110-63-4
1,4-Cyclohexanedimethanol	105-08-8
1,2-Ethanediol	107-21-1
1,6-Hexanediol	629-11-8
1,3-Pentanediol, 2,2,4-trimethyl-	144-19-4
1,2-Propanediol,	57-55-6
1,3-Propanediol, 2,2-bis(hydroxymethyl)-	115-77-5
1,3-Propanediol, 2,2-dimethyl-	126-30-7
1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-	77-99-6
1,3-Propanediol, 2-(hydroxymethyl)-2-methyl-	77-85-0
1,2,3-Propanetriol	56-81-5
1,2,3-Propanetriol, homopolymer	25618-55-7
2-Propen-1-ol, polymer with ethenylbenzene	25119-62-4
Modifiers	
Acetic acid, 2,2'-oxybis-	110-99-6
1-Butanol	[2]71-36-3
Cyclohexanol	108-93-0
Cyclohexanol, 4,4-(1-methylethylidene)bis-	80-04-6
Ethanol, 2-(2-butoxyethoxy)-	112-34-5
1-Hexanol	111-27-3
Methanol, hydrolysis products with trichlorohexylsilane and trichlorophenylsilane	[1]72318-84-4
1-Phenanthrenemethanol, tetradecahydro-1,4a-dimethyl-7- (1-methylethyl)-	13393-93-6
Phenol, 4,4'-(1-methylethylidene)bis, polymer with 2,2'- [(1-methylethylidene)bis(4,1-phenyleneoxymethylene)] bis[oxirane]	25036-25-3
Siloxanes and Silicones, di-Me, di-Ph, polymers with Ph silsesquioxanes, methoxy-terminated	[1]68440-65-3
Siloxanes and Silicones, di-Me, methoxy Ph, polymers with Ph silsesquioxanes, methoxy-terminated	[1]68957-04-0
Siloxanes and Silicones, Me Ph, methoxy Ph, polymers with Ph silsesquioxanes, methoxy- and Ph-terminated	[1]68957-08-2
Silsesquioxanes, Ph Pr	[1]68037-90-1

[1] Chemical substance of unknown or variable composition, complex reaction products, and biological materials (UVCB). The CAS Registry Numbers for UVCB substances are not used in CHEMICAL ABSTRACTS and its indexes.
[2] These substances may not be used in a substance manufactured from fumaric or maleic acid because of potential risks associated with esters, which may be formed by reaction of these reactants.

(f) *Exemption notice.* An exemption notice must be submitted to EPA no later than 30 days after commencement of manufacture for commercial purposes.

(1) *Notice form.* The information set forth in paragraph (f)(2) of this section must be submitted on EPA Form No.7710-?? (Form number to be assigned) as identified below.

(2) *Contents of exemption notice.* For substances exempt under paragraph (e) of this section the notice must include to the extent known to or reasonably ascertainable by the manufacturer:

(i) *Manufacturer's name.* This includes the name and address of the manufacturer and the name and telephone number of a technical contact in the United States.

(ii) *Type of exemption.* A designation on page 1 of the notice, of whether the manufacturer is claiming an exemption under paragraph (e)(1), (e)(2), or (e)(3) of this section.

(iii) *Site of manufacture.* The name and street address of the site of first manufacture or import.

(iv) *Chemical identity information.* (A) The identity by specific chemical name and CAS Registry Number (or EPA assigned Accession Number) of each "reactant", as that term is defined in paragraph (b) of this section, used at greater than two weight percent in the manufacture of the polymer. The manufacturer may determine whether a reactant is used at greater than two weight percent according to either the weight of the reactant charged to the reaction vessel or the weight of the chemically combined (incorporated) reactant in the polymer. Manufacturers who choose the "incorporated" method must maintain analytical data to demonstrate compliance with this paragraph.

(B) A representative structural diagram, as complete as can be known, of the polymer.

(C) The currently correct Chemical Abstracts (CA) Index name for the polymeric substance or the CA preferred name (whichever is appropriate based on Chemical Abstract Service (CAS) 9th Collective Index nomenclature rules and conventions).

(D) The currently correct CAS Registry Number (CASRN) for the polymeric substance if a CASRN already exists for the substance in the CAS Registry File.

(v) *Generic chemical identity.* If the chemical identity provided under this section is claimed as confidential information under paragraph (h) of this section, the notice must provide a non-confidential description of this information which is only as generic as necessary to protect the confidentiality of the information.

(vi) *Test data and other data.* Test data on the polymer in the possession or control of the manufacturer, a description of other data concerning the health and environmental effects of the polymer that are known to or reasonably ascertainable by the manufacturer, and a description of data on related chemicals, as required in § 720.50 of this chapter. (Identify as an attachment to the notice.)

(vii) *Date of first manufacture or import.* The date of first manufacture or import of the substance under the terms of this exemption.

(viii) *Certification.* A certification that:

(A) The notice includes all test data and other data required.

(B) The person submitting the notice manufactured or imported the polymer for a commercial purpose other than for research and development.

(C) All information provided in the notice is complete and truthful as of the date of submission.

(D) The new chemical substance meets the definition of a polymer, is not

specifically excluded from the exemption, and meets the conditions of the exemption. (Certification on page 1 of exemption form, plus the statement required by paragraph (f)(2)(viii)(D) of this section.)

(E) The person submitting the notice for a water insoluble polymer with a number average MW of 10,000 or greater (and oligomer content less than 2 percent below MW 500 and less than 5 percent below MW 1,000) is aware of the potential for harmful lung effects upon inhalation of respirable particulates of certain high molecular weight polymers as described in this chapter and has complied with paragraph (e)(2) of this section.

(F) The person submitting the notice is providing a correct chemical identification of this substance using Chemical Abstract Services (CAS) nomenclature as required under paragraph (f)(2)(iv) of this section.

(G) The Company named in Part 1 of the form has remitted the fee specified at 40 CFR 700.45(b) or, the Company named in Part 1 of the form is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b).

(ix) *List of attachments.* The notice must include a list of attachments submitted with the notice.

(g) *Notice procedures.* The following sections of 40 CFR part 720 of this chapter apply to the handling of notices under this section.

(1) Section 720.25 Determining whether a chemical substance is on the Inventory.

(2) Section 720.40 General. (Notice Form, paragraphs (g) and (h).

(3) Section 720.57 Imports.

(4) Section 720.70 Notice in the Federal Register.

(5) Section 720.80 General Provisions.

(6) Section 720.90 Data from health and safety studies.

(7) Section 720.95 Public file.

(h) *Confidentiality.* (1) If the manufacturer submits to EPA under this section information which it claims as confidential business information, the manufacturer must clearly identify the information at the time of submission to EPA in the manner prescribed on the notice form or by bracketing, and stamping "CONFIDENTIAL" any attachment. Any information so identified will be treated in accordance with the procedures in part 2 of this chapter. Any information not claimed confidential at the time of submission may be made available to the public without further notice. A submitter may assert a claim of confidentiality for the chemical identity only if the submitter believes that public disclosure of the fact that anyone manufactures or imports the new chemical substance for commercial purposes would reveal confidential business information.

(2)(i) Any person who asserts a claim of confidentiality for chemical identity under this paragraph must provide a generic name that is only as generic as necessary to protect the confidential chemical identity of the particular chemical substance. The name should reveal the specific chemical identity to the maximum extent possible.

(ii) The generic name provided by the submitter will be subject to EPA review and approval in accordance with the procedures specified in § 720.85(b)(6) of this chapter. The generic name provided by the submitter or an alternative selected by the EPA under these procedures will be placed on a public list of substances exempt under this section.

(3) If any information is claimed confidential, the manufacturer must submit a second copy of the notice except that all information claimed as confidential in the first copy must be deleted. EPA will place the second copy in the public file.

(i) *Additional information.* If the manufacturer of a new chemical substance under the terms of this exemption obtains test data or other information indicating that the new chemical substance may not qualify for the exemption, the manufacturer must submit these data or information to EPA within 15 working days of receipt of the information.

(j) *Notification of receipt of notice.* EPA will file for publication with the Office of the Federal Register, a notice of receipt by means of paragraph (g)(4) of this section. This notice does not constitute a finding by EPA that the notice, as submitted, is in compliance with this section. EPA will consider a person to have submitted the notice on the date the notice is received by the Document Control Officer for the Office of Pollution Prevention and Toxics. The exemption notice must be "postmarked" or hand-delivered by the 30th day after manufacture has commenced under the terms of this exemption.

(k) *Exemptions granted under superseded regulations.* Manufacturers holding exemptions granted under the superseded requirements of this section shall either continue to comply with those requirements or submit a new exemption notice pursuant to this section. If an exemption holder continues to follow the superseded regulations, the Notice of Commencement requirements apply and the exempt polymer will continue to be listed on the Inventory with exclusion criteria, exemption category restrictions, and residual monomer and low molecular weight species content limitations.

(l) *Recordkeeping.* (1) A manufacturer of a new polymer under paragraphs (e)(1), (e)(2), or (e)(3) of this section, must retain the records described in this paragraph at the manufacturing site for a period of 5 years from the final date of manufacture.

(2) The records must include the following to demonstrate compliance with the terms of this section:

(i) A copy of the exemption notice.

(ii) Documentation of any other information provided in the limited premanufacture notice, including:

(A) Information to demonstrate that the new polymer is not specifically excluded from the exemption.

(B) Information to demonstrate that the new polymer meets the exemption criteria in paragraphs (e)(1), (e)(2), or (e)(3) of this section including:

(*1*) Detailed batch records including reaction conditions (i.e., temperature, time, etc.) and amount of materials charged to the reactor and appropriate analytical test results for the first batch of the polymer manufactured for distribution in commerce and the initial batch manufactured for distribution in commerce immediately following any change in the polymer manufacturing process that may alter the eligibility of the polymer to meet the criteria at paragraphs (e)(1), (e)(2) or (e)(3) of this section as certified in the exemption notice.

(*2*) An explanation of the submitter's determination that the polymer is exempt under this section. Sufficient written explanation may include conclusions based on: Analytical data, analogies to other similar engineering or chemical processes, or extrapolations from R&D information on the polymer. A new written explanation must be made each time there is a change in manufacturing process that may alter the eligibility of the polymer to meet the criteria at paragraphs (e)(1), (e)(2), or (e)(3) of this section.

(C) If applicable, analytical data to demonstrate that the first batch of new polymer manufactured for commercial purposes under the exemption, and the initial batch manufactured subsequent to a change in manufacturing process that may alter the eligibility of the polymer to meet the criteria at paragraphs (e)(1) or (e)(2) of this section, meets the number-average MW exemption criteria in paragraphs (e)(1) or (e)(2) of this section. The analytical tests may include gel permeation chromatography (GPC), vapor pressure osmometry (VPO), or other such tests

which will demonstrate that the polymer meets the number-average MW criterion.

(D) If applicable, analytical data to demonstrate that the first batch of new polymer manufactured for commercial purposes under the terms of the exemption, and the initial batch manufactured subsequent to a change in manufacturing process that may alter the eligibility of the polymer to meet the criteria in paragraphs (e)(1) or (e)(2) of this section, meets the low MW content criteria in paragraphs (e)(1) or (e)(2) of this section.

(E) If applicable, analytical data required in paragraph (f)(2)(iv)(A) of this section to make an "as incorporated" basis determination for reporting reactants used at greater than 2 weight percent in the manufacture of the polymer.

(iii) Documentation of the nature and method of notification under paragraph (e)(2)(i) of this section including copies of any labels or written notices used.

(iv) If notification is required under paragraph (e)(2)(v) of this section, the names and addresses of any persons other than the manufacturer or importer to whom the substance is distributed and copies of the written notification required under that paragraph.

(v) Records that demonstrate compliance with the requirements of paragraph (e)(2) of this section. Records must demonstrate use of the required respirators under paragraph (e)(2) of this section or information to demonstrate that sufficient workplace controls are in place such that inhalation exposure does not exceed 0.5 mg/m^3 in any 8-hour work shift of a 40-hour work week. Records of any additional results of personal exposure monitoring and any additional information related to worker's occupational exposure which the manufacturer may possess must also be maintained and made available to EPA if requested.

(3) The manufacturer must submit the records listed in paragraph (l)(2) of this section to EPA upon written request by EPA. The manufacturer must provide these records within 15 working days of receipt of this request. In addition, any person who manufactures a new chemical substance under the terms of this section, upon request of EPA, must permit such person at all reasonable times to have access to and to copy these records.

(m) *Submission of information.* Information submitted to EPA under this section must be sent in writing to: Document Control Officer (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(n) *Compliance.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) A person who manufactures or imports a new chemical substance and fails to comply with paragraph (f) of this section is in violation of section 15 of the Act.

(3) Using for commercial purposes a chemical substance or mixture which a person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 5 of the Act is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by this section and section 11 of the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(5) Failure or refusal to permit entry or inspection as required by section 11 of the Act is a violation of section 15 of the Act (15 U.S.C. 2614).

(6) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation. Persons who submit materially misleading or false information in connection with the requirements of any provision of this section may be subject to penalties calculated as if they never filed their notices.

(7) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section or act to seize any chemical substance manufactured or processed in violation of this section or take other actions under the authority of section 7 of the Act (15 U.S.C. 2606) or section 17 of the Act (15 U.S.C. 2616).

(o) *Inspections.* EPA will conduct inspections under section 11 of the Act to assure compliance with section 5 and this section, to verify that information submitted to EPA under this section is true and correct, and to audit data submitted to EPA under this section.

(p) *Revocation of exemption.* (1) If at any time after an exemption application has been received under the terms of this section, EPA obtains information (through a TSCA section 8(e) report or through any other source) indicating to EPA that a particular polymer (or category of polymers that includes such polymer) or a reasonably anticipated metabolite or environmental transformation product of the substance may present an unreasonable risk of injury to human health or the environment, EPA shall notify the manufacturer of that polymer, by certified mail, that its exemption under this section will be revoked. The criteria for revocation of the exemption are that the polymer substance or a reasonably anticipated metabolite or environmental transformation product of the substance:

(i) May cause significant chronic effects, including carcinogenic, developmental or reproductive effects, under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal of the substance.

(ii) May cause significant acute effects (lethal or sublethal) under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal of the new substance.

(iii) May cause significant environmental effects under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal of the substance.

(2) The manufacturer may continue to manufacture, process, distribute in commerce, and use the substance after receiving the notice under paragraph (p)(1) of this section if the manufacturer was manufacturing, processing, distributing in commerce, or using the substance at the time of the notification and if the manufacturer submits written objections to EPA within 15 days of receipt of the notification. Such written objections must state the reasons why the manufacturer believes that the polymer will not present an unreasonable risk of injury to health or the environment. Manufacturers not manufacturing, processing, distributing in commerce, or using the substance at the time of the notification may not begin manufacture until EPA makes its final determination under paragraph (p)(3) of this section.

(3) EPA will consider any objections submitted under paragraph (p)(2) of this section and will make a final determination on whether to revoke the exemption. EPA will notify the manufacturer of the final determination by certified mail within 15 days of receipt of the objections submitted under paragraph (p)(2) of this section.

(4) Within 24 hours of receipt of a final determination from EPA that an exemption is revoked, the manufacturer of the substance for which the exemption was revoked shall cease all manufacturing, processing, distribution in commerce, and use of that substance. The manufacturer may not resume manufacture, processing, distribution in commerce, or use until it submits a premanufacture notice under section 5(a)(1) of the Act and part 720 of this chapter and the notice review period has ended.

(5) Action under this paragraph does not preclude action under any other applicable sections of the Act.

[FR Doc. 93-2776 Filed 2-5-93; 8:45 am]
BILLING CODE 6560-50-F

federal register

Monday
February 8, 1993

Part IV

Environmental Protection Agency

40 CFR Part 305

CERCLA Hearing Procedures for Claims Against the Superfund; Interim Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 305

[FRL-4195-6]

RIN 2050-AC26

CERCLA Administrative Hearing Procedures for Claims Asserted Against the Superfund

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule with request for comments.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is promulgating an interim final rule with request for comments to implement section 112 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). CERCLA section 112 outlines procedures for payments of claims authorized pursuant to CERCLA section 111. Furthermore, EPA uses the procedures authorized by CERCLA section 112 to reimburse parties for response costs incurred pursuant to CERCLA section 122. EPA reimburses the parties through payment of claims asserted against the Hazardous Substance Superfund (the Fund). The claims authority allows EPA to reimburse a person for the costs incurred for responding to an actual or threatened release of hazardous substances, pollutants, or contaminants if that person has received prior approval (preauthorization) from EPA to conduct a response action. If EPA denies all or part of a claim against the Fund for the costs incurred in conducting a preauthorized response action, the adversely affected claimant may request an administrative hearing to review that decision. This interim final rule establishes procedures to request such a hearing and governs the course of the proceeding following the request.

DATES: This interim final rule is effective February 8, 1993. Comments on the interim final rule must be submitted on or before 4 p.m. Eastern time on April 9, 1993.

ADDRESSES: Written comments on the interim final rule may be mailed or hand-delivered, in triplicate, to the Superfund Docket, located at the United States Environmental Protection Agency, 401 M Street, SW., room 2427, Washington, DC 20460. The record supporting this rulemaking is contained in the Superfund Docket and is available for inspection by appointment only (Telephone—202-260-3046) between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Site Control Division, (Mail Code—5203G), 401 M Street, SW., Washington, DC 20460; Telephone—703-603-8769. An alternative contact is the Superfund Hotline; 1-800-424-9346 (TDD 800-553-7672), or in the Washington, DC, area, (703) 920-9810 (TDD 703-486-3323).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
II. Discussion of Interim Final Rule
III. Summary of Supporting Analyses

I. Background

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or the Act) (Pub. L. No. 96-510), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub.L. No. 99-499), 42 U.S.C. 9601 *et seq.*, establishes broad authority for EPA to respond to actual or threatened releases of hazardous substances, and to actual or threatened releases of pollutants or contaminants that pose an imminent and substantial danger to the public health or welfare. CERCLA imposes liability on certain persons associated with releases of hazardous substances and provides authority to undertake enforcement, abatement, and cost recovery actions against responsible persons. The Act also established the Hazardous Substance Superfund (the Fund), which the Federal Government may use to respond to releases and to pay certain costs. The Fund also may be used to reimburse certain persons for costs incurred in responding to releases or threatened releases.

Section 111 of CERCLA governs the uses of the Fund, which is established under section 517 of SARA. Section 111(a) of CERCLA authorizes EPA to use the Fund to pay response claims. The procedures established today apply to such claims. These procedures are not applicable to claims for reimbursement under CERCLA section 106(a) for response actions performed by a potentially responsible party under an administrative order issued pursuant to that section, claims for reimbursement pursuant to CERCLA section 123, nor to any other claims for reimbursement for activities conducted under CERCLA.

There are two categories of response claims. The first category is authorized by CERCLA section 111(a)(2). Pursuant to that section EPA may reimburse "other persons," who are generally private non-governmental parties, for necessary response costs they have incurred as a result of carrying out the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300; 55 FR 8666, March 8, 1990) in responding to a release, or threat of a release, of a hazardous substance, pollutant or contaminant. "Other persons" may be persons other than the Federal Government, a State, or local government (unless the State or local government is also a potentially responsible party (PRP) covered by an order or consent decree under CERCLA section 122). Also, pursuant to 40 CFR 300.700(d)(iii), persons operating under a procurement contract or assistance agreement with the United States with respect to matters covered by that contract or assistance agreement, unless specifically provided therein, are excluded from the claims authority provided by CERCLA section 111(a)(2). Claimants may receive reimbursement of CERCLA section 111(a)(2) response costs only if EPA has preauthorized the response action pursuant to 40 CFR 300.700(d).

The second category of response claims, authorized by CERCLA section 122(b)(1), involves a settlement in which a PRP conducts a response action and EPA agrees to reimburse the party from the Fund for a portion of the response costs incurred, with interest. CERCLA section 122(a) authorizes the President to enter into an agreement with any person to perform any response action if the President determines that such action will be done properly by such person. CERCLA section 122(b) authorizes the President to provide in such agreements that he will reimburse the parties to the agreement, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the President has agreed to finance. EPA reimburses the parties through payment of claims asserted against the Fund. The general procedures for a person filing a claim with the Agency and the evaluation of the response claim by EPA are set forth at 40 CFR part 307.

Section 112 of CERCLA outlines the procedures for asserting a response claim against the Fund for reimbursement of costs incurred in conducting a response action. Claims filed pursuant to CERCLA section

111(a)(2) are governed by CERCLA section 112. EPA will also utilize the procedures authorized by CERCLA section 112 to satisfy reimbursements authorized by CERCLA section 122(b)(1). Both categories of claims for response action require EPA's prior approval or "preauthorization."

The process of preauthorization is implemented through subpart H of 40 CFR part 300. Section 40 CFR 300.700(d) provides a process under which EPA may, in its discretion, preauthorize Fund reimbursement for necessary response costs incurred by private parties as a result of carrying out the NCP. In order to qualify for preauthorization, the requesting party must establish, *inter alia*, that the action will be "consistent with the NCP." This showing should be site-specific, based on an evaluation of the list of potentially applicable NCP provisions. Further, where a PRP seeks preauthorization, the NCP provides that the action must be carried out pursuant to an order or settlement agreement with EPA. In both cases, "consistency with the NCP" for purposes of CERCLA section 107(a)(4)(B) would include any site-specific requirements necessitated by the preauthorization or enforcement processes.

If the Assistant Administrator or the Regional Administrator, who serves as the "Claims Official," or his delegatee denies all or part of a claim against the Fund for the costs incurred in conducting a preauthorized response action, the adversely affected claimant may make a request to the Administrator or his delegatee for an administrative hearing to review that decision. This interim final rule establishes procedures to request the administrative hearing and governs the course of such a proceeding.

II. Discussion of Interim Final Rule

A. EPA's Approach to Drafting the Rule.

Today, EPA is establishing procedures for a person to request an administrative hearing and for EPA to conduct such hearing in the event that a claimant is dissatisfied with the EPA Claims Official's decision to deny all or part of a claim. The interim final rule is modeled after 40 CFR part 22: "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits." EPA chose 40 CFR part 22 as a model because it incorporates well-established principles of administrative procedure familiar to the regulated community and the Government. Because this rule falls under the grants, benefits and contracts exemption of section 553 of the Administrative Procedures Act (5 U.S.C. 553(a)(2)), the Agency is not required to solicit public comment before the rule becomes effective. In addition, the Agency may make the rule effective immediately upon publication. The interim final approach is designed to allow the Agency to use these procedures to resolve disputed response claims immediately, while soliciting public comments. Public comments are invited and should be sent to the address listed in the "Address" section above. Comments received by April 9, 1993 will be considered and the Agency will at that point determine the necessity for a final rule.

B. Discussion of Interim Final Procedures.

Pursuant to section 9(e) of Executive Order 12580, 52 FR 2923, 3 CFR part 193 (1988), the President delegated to the Administrator of EPA (the Administrator) the functions vested in him by section 112 of the Act for all response claims presented pursuant to section 111 of the Act. Furthermore, EPA will use the procedures authorized by CERCLA section 112 to reimburse parties for response costs incurred pursuant to CERCLA section 122.

EPA may preauthorize an entire response action, a stage of a response action (e.g., remedial design, construction), an operable unit (i.e., a discrete action that comprises an incremental step toward comprehensively addressing site problems), or a stage of an operable unit.

After the response action is preauthorized, a person may begin that response action. After the response action (or stage or operable unit, as appropriate) is completed, pursuant to CERCLA section 112(a), that person must first present any claim for reimbursement to any known PRPs before submitting a claim against the Fund for reimbursement of necessary response costs incurred. If the claim is not satisfied within 60 days of presentation to those parties, the claimant may present it to EPA. However, EPA will not consider any claim against the Fund during the pendency of a court action by a claimant to recover costs which are the subject of the claim. CERCLA section 112(a). Sections 111(a)(2), 112(b), and 122(b) of CERCLA, which are implemented by regulations set forth at 40 CFR part 307, provide the procedures for filing and evaluating such response claims.

40 CFR part 307 provides that the EPA Claims Official must first determine that a claim is "perfected." A claim is perfected when the Claims Official determines that it is substantiated by all the documentation required to justify the amounts sought. After all required documentation is submitted, the Claims Official evaluates the claim. If he denies all or part of the claim, a claimant may make a request to the Administrator for an administrative hearing pursuant to CERCLA section 112(b). Any such request must be made within 30 days after the claimant receives notice of the Claims Official's decision.

The administrative hearing process consists of two phases, an informal review, and the formal administrative hearing process. The informal review is the first part of the administrative hearing process and is conducted by the Administrator, who serves as the Review Officer, or his delegatee, who has authority to resolve claims. Informal review provides a low-cost opportunity for the Review Officer to review Claims Officials' decisions for national consistency and consider extenuating circumstances. If the claimant is dissatisfied with the decision of the Review Officer, the claimant may notify him and he must immediately refer the matter to the Chief Administrative Law Judge to initiate the formal administrative hearing process. The Chief Administrative Law Judge, in turn, will assign an Administrative Law Judge (ALJ) to hear the matter as the Presiding Officer.

The second phase of the administrative hearing process begins when the dispute has been assigned to an ALJ and he takes jurisdiction over the case. The ALJ must render a written final order within 90 days of taking jurisdiction unless all parties agree in writing to an extension, or unless the Presiding Officer, upon motion or *sua sponte*, extends the time limit in which to issue a final order. The Presiding Officer may extend the period in which to issue a final order for up to 60 days. An extension by the Presiding Officer does not preclude an extension by agreement of the parties, nor does an extension by agreement of all parties preclude an extension by the Presiding Officer.

For CERCLA response claims, the ALJ will conduct a trial- type hearing considering all relevant legal and factual matters, including the terms and conditions of the Preauthorization Decision Document (PDD), and consent decree or administrative order on consent, as appropriate. The PDD will be relevant to a number of factors the ALJ will consider including: (1) The parties involved; (2) the response work to be performed; (3) he stage of that work at which a claim for

reimbursement may be submitted; (4) the expected cost of the response work; and (5) the percentage of eligible costs that EPA will reimburse from the Fund. After the administrative hearing, the ALJ will issue a final order disposing of these issues.

After the ALJ has issued a final order in the proceeding, no further administrative review is available. Pursuant to CERCLA section 112(b)(5), either the claimant who filed the Request for a Hearing or EPA may appeal the final order. Such appeal must be made to the appropriate Federal district court within 30 days of notification of the final order. The court can overturn the final order only if it is an arbitrary or capricious abuse of discretion. CERCLA section 112(b)(5). If neither party appeals, EPA must pay any award due within 20 days after the expiration of the appeal period for any final order. If an award is granted by a Federal district court on appeal, the award must be paid within 20 days after a final judicial order.

III. Summary of Supporting Analyses

Proposed and final rules issued by Federal Agencies are subject to several statutes and executive orders. These include Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

A. Executive Order 12291

Rulemaking procedures under Executive Order 12291 require that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to Executive Order 12291, major rules are regulations that are likely to result in:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this interim final rule is a non-major rule under Executive Order 12291 because it will not result in any of the impacts identified above. Therefore, the Agency has not prepared a regulatory impact analysis for this regulation. This interim final rule has been submitted to OMB for review under Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant economic impact on a substantial number of small entities." EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because all authorized costs and expenses are payable from the Fund. Further, this interim final rule imposes no capital expenditures, nor any compliance requirements on any business.

C. Paperwork Reduction Act

The interim final rule contains no information collection requirements which require approval by the Office of Management and Budget pursuant to 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 305

Administrative practice and procedures, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal.

Dated: January 13, 1993.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding part 305 to read as follows:

PART 305—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) ADMINISTRATIVE HEARING PROCEDURES FOR CLAIMS AGAINST THE SUPERFUND

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Authority: 42 U.S.C. 9601 *et seq.*; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

Subpart A—General

§ 305.1 Scope.

(a)(1) This part governs all administrative proceedings for the total or partial denial of response claims asserted against the Hazardous Substance Superfund (the Fund) pursuant to sections 111(a)(2) and 122(b)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9601 *et seq.*

(2) Sections 111(a)(2) and 122(b)(1) of CERCLA authorize EPA, among other things, to use the Fund to reimburse certain persons who file claims for eligible response costs incurred in carrying out the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. In the event that the Claims Official declines to pay all or part of a claim, a claimant may request an administrative hearing pursuant to § 305.4(a) within 30 days after receiving notice of the Claims Official's decision. The procedures governing such a proceeding are set forth in this part.

(b) Procedural questions arising at any stage of the proceeding which are not addressed in this part shall be resolved at the discretion of the Claims Official, the Review Officer, or the Presiding Officer, as appropriate.

§ 305.2 Use of number and gender.

As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine, as the case may require.

§ 305.3 Definitions.

(a) The following definitions apply to this part:

Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105.

Agency or *EPA* means the United States Environmental Protection Agency.

CERCLA or *the Act* means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9601 *et seq.*

Claim means a demand in writing for a sum certain, which is presented to the Fund in accordance with CERCLA sections 111 and 112.

Claimant means any person who presents a claim to the Fund for reimbursement under CERCLA section 112(b)(1).

Claims Official means the Assistant Administrator or the Regional Administrator or his delegatee who makes the initial decision awarding or denying a claim in whole or in part.

Confidential business information or *CBI* means business information for which a person has made a "business confidentiality claim" as defined in 40 CFR 2.201(h) and in accordance with all applicable provisions in 40 CFR part 2, subpart B, except insofar as the Administrator has denied the claim pursuant to the procedures in 40 CFR part 2, subpart B.

Final order means the decision of the Review Officer which has become final in accordance with § 305.4(a), or of the Presiding Officer, or in the case of a voluntary agreement (see § 305.25) of the parties, disposing of all legal and factual matters presented in the Request for a Hearing. A final order made by the Review Officer or the Presiding Officer shall contain findings of fact, conclusions of law, as well as the reasons therefore, and an order for an award of a sum certain, or an explanation of why no award is granted. The final order may consist of one or more of the following documents: the findings of fact, conclusions of law, and order of the Review Officer or the Presiding Officer; a voluntary agreement; an accelerated order; or a default order, if the default order provides for dismissal of the Request for a Hearing with prejudice. A final order is the final administrative decision of the Agency and (with the exception of a voluntary agreement) is appealable to the Federal district court for the district where the release or threat of release took place.

Fund or *Superfund* means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

Hearing means a hearing on the record open to the public and conducted under this part.

Hearing Clerk means the Hearing Clerk, A-110, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460.

National Contingency Plan or *NCP* means the National Oil and Hazardous Substances Pollution Contingency Plan developed under section 311(c) of the Clean Water Act and revised pursuant to section 105 of CERCLA (40 CFR part 300).

Party means EPA or any person that participates in a proceeding under this part as a Requestor.

Preauthorization means EPA's prior approval to submit a claim against the Fund for necessary response costs incurred as a result of carrying out the NCP.

Presiding Officer means the Administrative Law Judge designated by the Chief Administrative Law Judge, or the Chief Administrative Law Judge himself, in the absence of such designation, to conduct a hearing pursuant to this part.

Proceeding means the entire process of review of a claim conducted pursuant to this part that is initiated by a Request for a Hearing. A hearing is part of a proceeding.

Request for a Hearing means a written notice requesting an administrative hearing of the total or partial denial of a claim by the Claims Official. Such hearing shall be governed by this part.

Requestor is the party who files a Request for a Hearing.

Review Officer means the EPA Administrator or his delegatee who is authorized to exercise all powers and duties prescribed or delegated under the Act or this part to him.

Voluntary agreement (see § 305.25) means a written communication, signed by all the parties or their counsel or representatives, containing an order acceptable to both the Requestor and EPA. A voluntary agreement shall state that, for purposes of this proceeding, EPA consents to the award of a sum certain to the Requestor or such other consideration as the parties deem appropriate. A voluntary agreement is effective without approval of the Presiding Officer and is a final order as defined in this part.

(b) Terms defined in CERCLA or in 40 CFR part 300 and not defined in this part are used consistent with the meanings given in CERCLA or 40 CFR part 300.

§ 305.4 Powers and duties of the Review Officer and the Presiding Officer; disqualification.

(a) *Review Officer.* The Review Officer is authorized to receive Requests for a Hearing; attempt to promote settlement; make the decision of the Agency on the claim if the claimant does not request referral of the Request for a Hearing to the Chief Administrative Law Judge; and refer a Request for a Hearing to the Chief Administrative Law Judge when necessary. The Review Officer shall make the decision of the Agency on the claim in writing and shall serve the Requestor and the Claims Official with a copy of his decision. The Review Officer may, *sua sponte*, without ruling on the merits of the Request for a Hearing, refer it to the Chief Adminstrative Law Judge for decision. If the Requestor is not satisfied with the decision of the Review Officer, he may, within 10 days of service of such decision, request that the Review Officer refer the Request for a Hearing to the Chief Administrative Law Judge. The Requestor shall also serve such notice on the Claims Official. Otherwise the decision of the Review Officer is a final order. When referring a matter to the Chief Administrative Law Judge, the Review Officer shall include the Request for a Hearing, a copy of his decision, and any other pertinent documents. The Review Officer also shall notify the Requestor, the Hearing Clerk, and the Claims Official when he refers a Request for a Hearing to the Chief Administrative Law Judge. The Hearing Clerk, shall, upon receipt of the relevant documents, establish a file for the hearing. Thereafter, a copy of all pleadings must be filed with the Hearing Clerk. This requirement is in addition to the applicable service of documentation requirements contained in §305.5(b)(2). The Review Officer shall exercise all other powers and duties prescribed or delegated to him under the Act or this part.

(b) *Presiding Officer.* Upon receipt from the Review Officer of the Request for a Hearing, the Chief Administrative Law Judge shall designate himself or another Administrative Law Judge as Presiding Officer and shall transmit all documents related to the Request for a Hearing to the Presiding Officer. The Presiding Officer shall then notify the parties of his assignment pursuant to § 305.4(c). The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer shall have authority to:

(1) Conduct administrative hearings under this part;

(2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;

(3) Administer oaths and affirmations;

(4) Examine witnesses and receive documentary or other evidence;

(5) Order a party, or an officer or agent thereof, for good cause, upon motion, or *sua sponte*, to produce testimony, documents, or other nonprivileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of law and fact;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Extend the time limit for a final order in the hearing for a period not to exceed 60 days;

(10) Render findings of fact, conclusions of law, and a final order;

(11) Assess costs of the proceeding pursuant to § 305.36(b);

(12) Do all other acts and take all measures necessary for the maintenance of order and for the efficient and impartial adjudication of issues arising in proceedings governed by this part; and

(13) Resolve all disputes based on the evidence and applicable law; See § 305.31 concerning evidence.

(c) The Presiding Officer shall notify the parties that the Request for a Hearing has been assigned to him, and that he has received the case file from the Chief Administrative Law Judge. After ruling on any objections to jurisdiction, or final disposition of any objections to disqualification, the Presiding Officer shall render a final order within 90 days after he affirmatively accepts such jurisdiction. The Presiding Officer shall render a final order within the allotted time, unless all parties agree in writing to an extension, or unless, in his discretion, either upon motion of a party or *sua sponte*, he allows an extension of time not to exceed 60 days. If all parties agree in writing to an extension of the time period within which the Presiding Officer must issue a final order, the extension shall be for the period agreed to in writing by all parties. There are no limits to such periods other than that to which the parties have agreed in writing. An agreement by the parties to extend the time limit does not preclude the Presiding Officer from extending the time limit to issue a final order *sua sponte* or upon motion of a party, nor does an extension by the Presiding Officer preclude the parties from agreeing to an extension.

(d) *Disqualification; withdrawal.* (1) Neither the Review Officer nor the Presiding Officer may perform functions provided for in this part regarding any matter in which he: has a financial interest; or has any relationship with a party or with the subject matter that would make it inappropriate for him to act. A party shall, by motion presented within 5 days after receiving notice of the assignment of the Presiding Officer, make any objection to his assignment. Otherwise, any objections to the qualifications of the Presiding Officer are waived, unless such objections arise after the time for presenting objections allowed by this paragraph. In such case, any objection must be made within 5 days of the time within which it arose. Either party may appeal the Presiding Officer's ruling on a motion to disqualify him to the Chief Administrative Law Judge. The Chief Administrative Law Judge shall rule on such motion in a timely fashion. When the Chief Administrative Law Judge is the Presiding Officer, he shall refer any challenge to his qualification to hear the case to another Administrative Law Judge for decision. The Review Officer or the Presiding Officer may at any time withdraw from any proceeding in which he deems himself disqualified or unable to act for any reason.

(2) If the Review Officer or the Presiding Officer is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned to replace him. The Administrator shall appoint a new Review Officer. The Chief Administrative Law Judge shall assign a new Presiding Officer from among the available Administrative Law Judges.

(3) The Chief Administrative Law Judge shall have the power to rule on motions for disqualification as described in paragraph (d)(1) of this section and may, at any stage in the hearing, reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and will not prejudice the parties.

§ 305.5 Filing, service, and form of pleadings and documents.

(a) *Filing of pleadings and documents.* (1) The original and one copy of the Request for a Hearing shall be served on the Review Officer. Service on the Review Officer shall be made in the manner prescribed by paragraph (b) of this section. The Requestor shall serve his Request for a Hearing on the Review Officer within 30 days of receipt of the Claims Official's decision. The Review Officer shall promptly notify the Claims Official of receipt of a Request for a Hearing and shall provide him a copy of such request. The original of all other pleadings and documents shall be filed with the appropriate official and a copy served on each party.

(2) A certificate of service shall accompany each document filed or served. Except as otherwise provided, a party filing documents with the Hearing Clerk, after filing of the answer, shall serve copies thereof upon all other parties and the Presiding Officer. The Presiding Officer shall maintain a duplicate file during the course of the proceeding.

(3)When the Presiding Officer corresponds directly with a party, the original of the correspondence shall be sent to the Hearing Clerk, a copy shall be maintained by the Presiding Officer in the duplicate file, and a copy shall be sent to all parties. A party who corresponds directly with the Presiding Officer shall, in addition to serving all other parties, send a copy of all such correspondence to the Hearing Clerk. A certificate of service shall accompany each document served under this paragraph.

(b) *Service of pleadings and documents* (1) *Service of Request for a Hearing.* Service of a signed original Request for a Hearing with copy thereof may be made on the Review Officer either personally or by certified mail, return receipt requested. The Review Officer shall assign a docket number to the Request for a Hearing, and shall notify the Requestor, the Hearing Clerk, and the Claims Official of such docket number.

(2) *Service of documents other than the Request for a Hearing.* (i) All documents other than the Request for a Hearing may be served on the appropriate official personally or by certified mail, return receipt requested, or by first class mail, postage pre-paid. After initiation of the hearing, a party serving any document must also submit a copy of such document to the Hearing Clerk.

(ii) Service upon the Claims Official, the Review Officer, or the Hearing Clerk shall be made by delivering two copies of the document to the appropriate official in the manner prescribed in paragraph (b)(2)(i) of this section.

(iii) Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to an action under a common name shall be made in the manner prescribed in paragraph (b)(2)(i) of this section, directed to an officer, partner, a managing or general agent, or to any other person authorized by appointment or by Federal or State law to receive service of process.

(iv) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the document in the manner prescribed by the law of the State for the service of process on any such persons, or:

(A) If upon a State or local unit of government, or a State or local department, agency, corporation or other instrumentality, by personal service or certified mail, as prescribed by paragraph (b)(1) of this section, directed to the Chief Executive Officer thereof;

(B) If upon a State or local officer, by personal service or certified mail, as prescribed by paragraph (b)(1) of this section, to such officer.

(c) *Form of pleadings and documents.* (1) Except as provided herein, or by order of the Presiding Officer, there are no specific requirements as to the form of documents.

(2) The first page of every pleading, letter, or other document shall contain a caption identifying the Requestor, the docket number assigned by the Review Officer, and the official to whom the document is directed. All pleadings greater than ten pages in length, and all legal briefs, shall contain a table of contents and a table of citations with page references.

(3) The original of any pleading, letter or other document (other than exhibits) shall be signed by the party filing or by his counsel or other representative. The signature constitutes a representation by the signer that he has read the pleading, letter, or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any party shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the appropriate official, and all parties to the proceeding. A party who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under this part.

(5) The Claims Official, Review Officer, Presiding Officer, or Hearing Clerk may refuse to file any document which does not comply with paragraph (c) of this section. Written notice of such refusal, stating the reasons therefore, shall be promptly given to the party submitting the document. Such party may amend and resubmit any document refused for filing, if such amendment and resubmission is timely. If, for good cause shown, amendment and resubmission is not timely, a party may request an extension of the time in which to submit a document to the appropriate official.

(d) *Confidential Business Information.* (1) Any person filing or serving any pleading or document under this part containing information claimed as Confidential Business Information (CBI) shall assert the claim as specified in 40 CFR 2.203(b). The failure to assert a CBI claim in accordance with this section, at the time the pleading or document is filed or served, shall constitute a waiver of any rights to assert any CBI claim with respect to the business information in the pleading or document.

(2) Any pleading or document containing CBI shall be filed in a double envelope. The outside envelope should not mention that CBI is contained. The inside envelope shall specify the envelope contains CBI.

(3) For each original or copy of each pleading or document filed or served which contains CBI, the person shall submit two versions.

(i) One version must be complete. In that version, the person shall mark the specific information claimed as CBI pursuant to this section.

(ii) The CBI must be deleted in the second version, and all information claimed as CBI must be indicated in such version, as well as the nature of the information claimed as CBI, and the fact that another version containing the CBI has been filed pursuant to this section.

(4) The Hearing Clerk shall not accept for filing any CBI pleading or document which does not comply with the requirements of paragraphs (d)(2) and (3) of this section.

(5) All claims of CBI, and all information entitled to treatment as CBI, shall be governed by the provisions of 40 CFR part 2, subpart B, for CERCLA, as well as any other EPA regulatory provisions affecting the confidentiality of the information.

§ 305.6 Computation and extension of time.

(a) *Computation.* In computing any period of time described or allowed in this part, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or Federal legal holiday, the stated time period shall be extended to include the next business day.

(b) *Extension of time.* The Presiding Officer, or Review Officer as appropriate, may grant an extension of time for the filing of any pleading, document or motion upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, or upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(c) *Service by mail.* Service of the Request for a Hearing is complete when the return receipt is signed by the Review Officer. Service of all other pleadings and documents is complete upon mailing. Where a pleading or document is served by mail, 5 days shall be added to the time allowed by this part for the filing of a responsive pleading or document.

§ 305.7 Ex parte discussion of proceeding.

At no time after the Request for a Hearing is referred to the Presiding Officer shall the Presiding Officer discuss *ex parte* the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performed a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party, shall be regarded as an argument made in the proceeding and shall be served upon all other parties. Any other party shall be given the opportunity to reply to such memorandum or communication.

§ 305.8 Examination of documents filed.

(a) *Inspection of Documents.* Subject to the provisions of law restricting public disclosure of confidential information, any person may, during Agency business hours, inspect and copy any document filed in any proceeding. Such documents shall be made available by the Claims Official, Review Officer, or Hearing Clerk, as appropriate.

(b) *Costs.* The cost of duplicating documents filed in any proceeding shall be borne by the person seeking copies of such documents. The Agency may waive this cost in appropriate cases.

Subpart B—Parties and Appearances

§ 305.10 Appearances.

Any party may appear in person or by counsel or other representative. A

partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§ 305.11 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer may, by motion or *sua sponte,* consolidate any or all matters at issue in two or more proceedings docketed under this part where:

(1) There exist common parties or common questions of fact or law;

(2) Consolidation would expedite and simplify consideration of the issues; and

(3) Consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

(b) *Severance.* The Presiding Officer may, by motion or *sua sponte,* for good cause shown, order any proceedings severed with respect to any or all parties or issues.

Subpart C—Prehearing Procedures

§ 305.20 Request for a hearing; contents.

(a) Within 30 days after receiving notice that the Claims Official has declined to pay all or part of a claim, the claimant may file a Request for a Hearing with the Review Officer. The Request for a Hearing shall contain:

(1) A statement of the authority for the Request for a Hearing;

(2) A concise statement of the reasons that the Requestor disputes the Claims Official's denial of all or part of the claim;

(3) A request for an administrative hearing concerning the Claims Official's total or partial denial of his claim pursuant to this part; and

(4) A statement of amount that the Requestor demands to be awarded from the Fund.

(b) The Requestor must file with the Request for a Hearing two copies of:

(1) The Preauthorization Decision Document for the response work that is the subject of the claim;

(2) The claim filed with EPA pursuant to CERCLA section 111(a)(2) or 122(b)(1); and

(3) The written notice from the Claims Official denying all or part of the claim.

§ 305.21 Amendment of request for a hearing; withdrawal.

(a) *Amendment of Request for a Hearing.* The Requestor may amend the Request for a Hearing once as a matter of right at any time before the answer is filed. Otherwise the Requestor may amend the Request for a Hearing only upon motion granted by the Presiding Officer. The Claims Official shall have 10 additional days from the date of service of the amended claim to file his answer.

(b) *Withdrawal of Request for a Hearing.* The Requestor may withdraw the Request for a Hearing, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal without prejudice before the filing of an answer, or after the filing of an answer, the Requestor may withdraw the Request for a Hearing, or any part thereof, without prejudice, only upon motion granted by the Presiding Officer. In no case may a Request for a Hearing be filed more than 30 days after the Requestor has received notice that the Claims Official has declined to pay all or part of a claim.

§ 305.22 Answer to the request for a hearing.

(a) *General.* The Claims Official shall file an original and one copy of a written answer to the Request for a Hearing with the Hearing Clerk when he: contests any material fact upon which the Request for a Hearing is based; contends that the amount of money demanded in the Request for a Hearing is inappropriate; or contends that he is entitled to judgment as a matter of law. Any such answer to the Request for a Hearing must be filed with the Hearing Clerk and served on all parties within 15 days after the Presiding Officer has assumed jurisdiction over the case as provided by § 305.4(d).

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny, or explain each of the factual allegations in the Request for a Hearing with regard to which the Claims Official has any knowledge. When the Claims Official has no knowledge of a particular allegation and so states, the allegation is deemed denied. The answer shall also state:

(1) The circumstances or arguments which are alleged to constitute the grounds of defense; and

(2) The facts which the Claims Official intends to place at issue.

(c) *Failure to admit, deny, or explain.* Failure of the Claims Official to admit, deny or explain any material factual allegation contained in the claim constitutes an admission of the allegation.

(d) *Amendment of the answer.* The Claims Official may amend the answer to the Request for a Hearing upon motion granted by the Presiding Officer.

§ 305.23 Motions.

(a) *General.* All motions, except those made orally on the record during a hearing, shall: be in writing; state the grounds therefor with particularity; set forth the relief sought and a proposed order; and be accompanied by an affidavit, certificate, other evidence, or legal memorandum relied upon. Such motions shall be served as provided by § 305.5(b)(2)(i).

(b) *Response to motions.* A party's response to any written motion must be filed within 10 days after service of such motion, unless additional time is allowed for such response. The response shall be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon. If no response is filed within the designated period, the parties may be deemed to have waived any objection to the granting of the motion. The Presiding Officer may set a shorter time for response, or make such other orders concerning the disposition of motions as he deems appropriate.

(c) *Decision.* The Presiding Officer, or Chief Administrative Law Judge, in the absence of a Presiding Officer, shall rule on all motions. Oral argument on motions will be permitted in the discretion of the Presiding Officer. See § 305.4(a) concerning motions to extend the time limit for final orders.

§ 305.24 Default order.

(a) *Default.* A party may be found to be in default: after motion, upon failure of the Claims Official to file a timely answer to the Request for a Hearing; after motion or *sua sponte,* upon failure to comply with a prehearing or hearing order of the Presiding Officer; or after motion or *sua sponte,* upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of failure to appear at a hearing shall be made against the Claims Official unless the Requestor presents sufficient evidence to the Presiding Officer to establish a prima facie case in support of his claim. Any motion for a default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have 10 days from service to reply to the motion. Default by the Claims Official constitutes, for purposes of the pending action only, an admission of all facts alleged in the claim and a waiver of his right to a hearing on such factual allegations. Default by the Requestor may result in the dismissal of the Request for a Hearing with prejudice.

(b) *Procedures upon default.* When the Presiding Officer finds a default has occurred, he shall issue a default order

against the defaulting party. The default order shall constitute the final order in the proceeding, and shall be filed with the Hearing Clerk.

(c) *Contents of a default order.* A default order shall include findings of fact showing the grounds for the order; conclusions regarding all material issues of law; costs to be assessed pursuant to § 305.36, if applicable; and, the amount to be awarded the claimant, if any.

(d) *Setting aside a default order.* For good cause shown, the Presiding Officer may set aside a default order.

§ 305.25 Informal settlement; voluntary agreement.

(a) *Settlement policy.* The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. Settlement conferences shall not affect the Claims Official's obligation to file a timely answer under § 305.22.

(b) *Voluntary agreement.* The voluntary agreement shall state that, for the purpose of this proceeding, the Claims Official consents to the award of a sum certain to the Requestor or in the case of no award, that both parties agree to settle the matter. The voluntary agreement shall include an order acceptable to both the Requestor and EPA, and shall be signed by all parties or their counsel or representatives. A voluntary agreement is effective without approval of the Presiding Officer and is a final order as defined in this part.

§ 305.26 Prehearing conference.

(a) *Purpose of prehearing conference.* Unless a conference appears unnecessary, the Presiding Officer, at any time before the hearing begins, shall direct the parties and their counsel or other representatives to appear at a conference before him to consider:

(1) The settlement of the case;

(2) The simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to the pleadings;

(4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;

(5) The limitation of the number of expert or other witnesses;

(6) Setting a time and place for the hearing; and

(7) Any other matters which may expedite the disposition of the proceeding.

(b) *Exchange of witness lists and documents.* Unless otherwise ordered by the Presiding Officer, each party at the prehearing conference shall make available to all other parties: the names of the expert and other witnesses he intends to call, together with a brief narrative summary of their expected testimony; and copies of all documents and exhibits which each party intends to introduce into evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. Documents that have not been exchanged and witnesses whose names have not been exchanged shall not be introduced into evidence or allowed to testify without permission of the Presiding Officer. The Presiding Officer shall allow the parties reasonable opportunity to review new evidence.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer upon motion of a party or *sua sponte.* The Presiding Officer shall prepare and file for the record a written summary of the action taken at the conference and shall serve that summary on all parties in the manner provided in § 305.5(b)(2). The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(d) *Location of the prehearing conference.* The prehearing conference shall be held in the county where the release occurred, in the city in which the EPA Regional Office is located (in the Region where the release or threat of release occurred), or in Washington, DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone.

(e) *Unavailability of a prehearing conference.* If a prehearing conference is unnecessary or impracticable, the Presiding Officer, on motion or *sua sponte,* may direct the parties to correspond with him to accomplish any of the objectives set forth in this section.

(f) *Other discovery.* (1) Discovery shall include any of the methods described in rule 26(a) of the Federal Rules of Civil Procedure.

(2) The parties may conduct any mutually agreed upon discovery without participation or determination of the Presiding Officer except that such voluntary discovery may be subject to such time limitations as the Presiding Officer deems appropriate.

(3) Except as provided by paragraphs (b) and (f)(2) of this section, further discovery, under this section, shall be permitted only pursuant to order of the Presiding Officer. Any party to the proceeding desiring an order of discovery shall make a motion therefore. Such motion shall set forth:

(i) The circumstances warranting the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The method of discovery sought, including, where relevant, the proposed time and place where the discovery will be conducted.

(4) The Presiding Officer shall issue an order for discovery only upon a showing of good cause and upon a determination:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not otherwise obtainable; and

(iii) That such information has significant probative value.

If the Presiding Officer determines that the motion should be granted, he shall issue an order for such discovery together with the conditions and terms thereof.

(5) The Presiding Officer shall order depositions upon oral questions only upon a finding that:

(i) The information sought cannot be obtained by alternative methods of discovery; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(6) When the information sought to be obtained is within the control of one of the parties, failure to comply with an order issued pursuant to this paragraph may lead to:

(i) The inference that the information to be discovered would be adverse to the party from whom the information was sought; or

(ii) The issuance of a default order under § 305.24(a).

(g) *Interpreters.* The Presiding Officer shall make the necessary arrangements for the services of an interpreter upon the motion of a party or *sua sponte.* The cost of the interpreter shall normally be borne by the party requesting the service, but the Presiding Officer may apportion the cost among the parties as justice demands.

§ 305.27 Accelerated order, order to dismiss.

(a) *General.* The Presiding Officer, upon motion of any party or *sua sponte,* may at any time render an accelerated order in favor of the Requestor or the Claims Official as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material

fact exists and the party is entitled to judgment as a matter of law, as to all or any part of the proceeding. In addition, the Presiding Officer, upon motion of the Claims Official, may at any time dismiss a Request for a Hearing without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the Requestor.

(b) *Effect.* (1) If an accelerated order or an order to dismiss is issued as to all the issues in the proceeding, the order constitutes the final order of the Presiding Officer, and shall be filed with the Hearing Clerk.

(2) If an accelerated order or an order to dismiss is rendered on less than all issues in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall thereupon issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues upon which the hearing will proceed.

Subpart D—Hearing Procedure

§ 305.30 Scheduling the hearing.

(a) *Filing of answer.* When an answer is filed, the Hearing Clerk shall forward such answer to the Presiding Officer.

(b) *Notice of hearing.* The Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing. The Presiding Officer may issue the notice of hearing at any appropriate time, but not later than 20 days prior to the date set for the hearing.

(c) *Postponement of hearing.* No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) *Location of the hearing.* The location of the hearing shall be determined in accordance with the method of determining the location of a prehearing conference under § 305.26(d).

§ 305.31 Evidence.

(a) *General.* The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value, except that evidence which would be excluded in the Federal courts under Rule 408 of the Federal Rules of Evidence (28 U.S.C. Appendix) is not admissible. In the presentation, admission, disposition, and use of evidence, the Presiding Officer shall follow the provisions regarding confidential business information of 40 CFR part 2, subpart B for CERCLA. The commercial or trade secret status of any information shall not, however, preclude its being introduced into evidence. The Presiding Officer may make such orders as may be necessary to consider such evidence *in camera*, including the preparation of a supplemental final order to address questions of law or fact which arise out of that portion of the evidence which is confidential or which includes trade secrets. For the purpose of recording the hearing, the court reporter shall be considered "a person under contract or subcontract to EPA to perform work for EPA in connection with the Act or regulations which implement the Act" pursuant to 40 CFR 2.301(h)(2); unless the affected business, as defined in 40 CFR 2.201(d), agrees to some other procedures approved by the Presiding Officer.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in this part or by the Presiding Officer. A party shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) *Verified statements.* The Presiding Officer may admit and insert into the record as evidence, in lieu of oral testimony, statements of fact or opinions prepared by a witness. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall deliver a copy of the statement to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the statement shall swear to or affirm the statement and shall be subject to appropriate oral cross-examination upon the contents thereof.

(d) *Admission of affidavits and other statements where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits and other verified written statements of witnesses who are unavailable. The term "unavailable" shall have the meaning accorded to it by rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter which may be judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 305.32 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) *Offer of proof.* Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. The offer of proof for excluded documents or exhibits shall consist of the insertion into the record of the documents or exhibits excluded.

§ 305.33 Burden of presentation; burden of persuasion.

The Requestor has the burden of going forward with his case and of proving that the amount demanded in the Request for a Hearing is justified. Accordingly, the Requestor bears the burdens of presentation and persuasion. Following the establishment of a prima facie case, the Claims Official shall have the burden of presenting and of going forward with any defense to the allegations set forth in the Request for a Hearing. Each matter of controversy shall be determined by the Presiding Officer upon a preponderance of the evidence.

§ 305.34 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the Hearing Clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the Presiding Officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The Hearing Clerk shall notify all the parties of the availability of the transcript and shall furnish the Requestor with a copy of the transcript upon payment of the cost of reproduction, unless a Requestor can

show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer. Any party may file a motion to correct the transcript in accordance with the provision of § 305.23.

§ 305.35 Proposed findings, conclusions, and order.

Within 20 days after the parties are notified of the availability of the transcript, any party may submit for the consideration of the Presiding Officer proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a time by which reply briefs may be submitted. The Presiding Officer may by order extend the time or change the schedule of such submissions or allow further submissions as may be appropriate. All submissions shall be in writing, shall be served upon all parties, and shall contain references to the record for all proposed findings of fact and appropriate citations for authorities relied upon.

§ 305.36 Final order; costs.

(a) *Filing and content.* The Presiding Officer shall issue and file with the Hearing Clerk a final order as soon as practicable after the period for filing reply briefs under § 305.35 has expired, but within the time allowed for issuance of a final order as prescribed by § 305.4(d). The final order shall contain his findings of fact, conclusions of law, as well as the reasons therefor, and an order for an award for a sum certain, or an explanation of why no award is granted.

(b) *Costs.* If the Presiding Officer concludes in writing that the Request for a Hearing was frivolous, he may direct the Hearing Clerk to assess all or part of the costs of the proceeding against the Requestor. In such case, the Hearing Clerk shall assess such costs as directed by the Presiding Officer, and shall serve notice of such direction and the amount of such costs on all parties. No later than 5 days after receipt of notice of assessment of costs, the Requestor may move that the Presiding Officer review the assessment of costs by the Hearing Clerk. The Presiding Officer may uphold, reverse, or modify the action of the Hearing Clerk in assessing costs.

[FR Doc. 93-2702 Filed 2-5-93; 8:45 am]

BILLING CODE 6560-50-F

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–017–00119–8)	30.00	July 1, 1992
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630–699	(869–017–00122–8)	14.00	[8] July 1, 1991
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800–End	(869–017–00124–4)	20.00	July 1, 1992
33 Parts:			
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200–End	(869–017–00127–9)	23.00	July 1, 1992
34 Parts:			
1–299	(869–017–00128–7)	27.00	July 1, 1992
300–399	(869–017–00129–5)	19.00	July 1, 1992
400–End	(869–017–00130–9)	32.00	July 1, 1992
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36 Parts:			
1–199	(869–017–00132–5)	15.00	July 1, 1992
200–End	(869–017–00133–3)	32.00	July 1, 1992
37	(869–017–00134–1)	17.00	July 1, 1992
38 Parts:			
0–17	(869–017–00135–0)	28.00	Sept 1, 1992
18–End	(869–017–00136–8)	26.00	Sept. 1, 1992
39	(869–017–00137–6)	16.00	July 1, 1992
40 Parts:			
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52	(869–017–00139–2)	33.00	July 1, 1992
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61–80	(869–017–00141–4)	16.00	July 1, 1992
81–85	(869–017–00142–2)	17.00	July 1, 1992
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100–149	(869–017–00144–9)	34.00	July 1, 1992
150–189	(869–017–00145–7)	21.00	July 1, 1992
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260–299	(869–017–00147–3)	36.00	July 1, 1992
300–399	(869–017–00148–1)	15.00	July 1, 1992
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41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
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7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
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18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
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42 Parts:			
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400–429	(869–013–00159–1)	21.00	Oct. 1, 1991
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43 Parts:			
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4000–End	(869–017–00162–7)	13.00	Oct. 1, 1992
44	(869–017–00163–5)	26.00	Oct. 1, 1992
45 Parts:			
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200–499	(869–013–00166–4)	12.00	Oct. 1, 1991
500–1199	(869–016–00167–0)	30.00	Oct. 1, 1992
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46 Parts:			
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166–199	(869–017–00174–1)	17.00	Oct. 1, 1992
200–499	(869–017–00175–9)	22.00	Oct. 1, 1992
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47 Parts:			
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*80–End	(869–017–00181–3)	24.00	Oct. 1, 1992
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 30, 1992. The CFR volume issued April 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1992. The CFR volume issued July 1, 1991, should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 1991 to September 30, 1992. The CFR volume issued October 1, 1991, should be retained.