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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.

FARM CREDIT SYSTEM INSURANCE CORPORATION

5 CFR Part 4001

12 CFR Part 1401

RIN 3055–AA03, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Farm Credit System Insurance Corporation

AGENCY: Farm Credit System Insurance Corporation (Corporation).

ACTION: Interim rule; request for comments.

SUMMARY: The Farm Credit System Insurance Corporation, with the concurrence of the Office of Government Ethics (OGE), is issuing as an interim rule regulations for the officers and employees of the Corporation that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) issued by OGE. The interim rule is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to Corporation programs and operations. Prior to the issuance of the interim rule, the Corporation had administratively adopted the Farm Credit Administration (FCA) standards of conduct regulations. The FCA, however, is issuing supplemental regulations to the Executive Branch-wide Standards that, when effective, will remove its conduct regulations except for a residual cross-reference. This Corporation interim rule establishes regulations imposing prohibitions on the ownership of certain financial interests; prohibitions on certain forms of borrowing and extensions of credit; limitations on purchases of assets owned by Farm Credit System (System) institutions, conservatorship or receivership assets, or certain assets held by the Corporation; restrictions arising from the employment of relatives; a prohibition against involvement in Farm Credit System board member elections; and restrictions on outside employment and business activities. In addition to this interim rule, the Corporation will be issuing a single section in its regulations that provides cross-references to the Executive Branch-wide Standards and financial disclosure regulations, as well as these new supplemental regulations.

DATES: This interim rule is effective July 12, 1995. Notice of effective date will be published in the **Federal Register**. Comments must be submitted on or before July 12, 1995.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to Mary A. Creedon, Chief Operating Officer, in care of Cindy Nicholson, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826. Copies of all comments will be available for examination by interested parties in the offices of the Farm Credit System Insurance Corporation.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Policy Analyst, Farm Credit System Insurance Corporation, McLean, VA 22102–0826, (703) 883–4498,

or

Wendy R. Laguarda, Senior Attorney and Deputy Ethics Official, Farm Credit System Insurance Corporation, McLean, VA 22102–0826, (703) 883–4234, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published Executive Branch-wide Standards for employees of the executive branch. *See* 57 FR 35006–35067, as corrected at 57 FR 48557 and FR 52583, with additional grace period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. The Executive Branch-wide Standards are codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Corporation, with OGE's concurrence, has determined, in light of the Corporation's specialized functions as insurer, conservator, and receiver for Corporation-insured System institutions, that the following supplemental regulations being codified in new chapter XXX, consisting of part 4001, of title 5 of the Code of Federal Regulations, are necessary to implement the Corporation's ethics program successfully.

II. Analysis of the Regulations

Section 4001.101—General

Section 4001.101 explains that the regulations contained in the interim rule apply to Corporation employees and supplement the Executive Branch-wide Standards. Corporation employees must comply with the Executive Branch-wide Standards, the supplemental regulations in this interim rule, and Corporation guidance and procedures issued pursuant to the Executive Branch-wide Standards and these supplemental regulations.

Section 4001.102—Definitions

Section 4001.102 identifies and defines the unique terms used in the supplemental regulations. The term ''covered employee'' is intended to include all examiners of System institutions who perform work for the Corporation and any other employee specified as such by Corporation directive whose duties and responsibilities require application of these supplemental regulations to ensure public confidence that the Corporation's programs are conducted impartially and objectively. The Corporation Designated Agency Ethics Official (DAEO) or his or her designee, in consultation with the Chief Operating Officer, will determine which employees are covered for purposes of this regulation.

The term ''related entity'' is intended to be broadly interpreted and includes agricultural mortgage marketing facilities established by System institutions, affiliates of the Federal Agricultural Mortgage Corporation, service organizations established by the System banks, and all other entities owned or controlled by one or more System institutions that are not chartered by the FCA.

The term ''System institution'' refers to all institutions chartered and regulated by the FCA, and also includes

the Federal Farm Credit Banks Funding Corporation and the Federal Agricultural Mortgage Corporation.

Section 4001.103—Prohibited Financial Interests

(a) *Prohibition.* Section 4001.103(a) prohibits a covered employee, or a spouse or minor child of a covered employee, from owning securities issued by a System institution or related entity.

The Corporation has determined, in accordance with 5 CFR 2635.403(a), that this restriction is necessary, in light of its multifaceted responsibilities, to maintain public confidence in the impartiality and objectivity with which the Corporation executes its functions. The restriction will eliminate any reason for regulated entities to be concerned that sensitive information provided to the Corporation might be misused for private gain and will avoid widespread disqualification of employees from official matters, which might result in the Corporation's inability to fulfill its mission.

(b) *Definition of Securities.* Section 4001.103(b) contains a definition of the term ''securities'' to be applied to § 4001.103. It includes any ''interest in debt or equity instruments'' such as, for example, stocks, bonds, and commercial paper.

(c) *Exceptions.* Section 4001.103(c) includes several exceptions to the prohibition in § 4001.103(a) against owning securities issued by System institutions or related entities. The exceptions are intended to permit ownership of interests of a character unlikely to raise questions regarding the objective and impartial performance of Corporation employees' official duties or the possible misuse of their positions.

Section 4001.103(c) (1) and (2) permit employees to retain System securities in certain funds or plans, the assets of which are managed by an independent third party and are not concentrated in System securities. Such funds may include a publicly traded or publicly available investment fund or an employee's interest in a qualified profit sharing, retirement, or similar plan.

Section 4001.103(c)(3) permits employees to retain securities of System institutions held, in accordance with § 4001.104(b), as a result of pre-existing credit. This exception is necessary because the System institutions are borrower-owned institutions that require eligible borrowers to purchase a minimum amount of an institution's stock as a condition of obtaining a loan. Thus, if an employee has pre-existing credit from a System institution, he or she also will own stock in the institution, which is generally not retired until after the loan is paid off.

Section 4001.103(c)(4) is included as a specific cross-reference to the waiver authority at § 4001.109 which is to be used on a case-by-case basis.

Section 4001.104—Prohibited Borrowing

(a) *Prohibition on Employee Borrowing.* Section 4001.104(a) prohibits a covered employee, or a spouse or minor child of a covered employee, from seeking or obtaining a loan or extension of credit from a System institution or an officer, director, employee, or related entity of a System institution.

Imposed pursuant to 5 CFR 2635.403(a), this prohibition on borrowing is necessary for several reasons. First, it is necessary to prevent covered employees from obtaining or appearing to obtain loans or extensions of credit on preferential terms, or from benefiting or appearing to benefit from their official positions through possible forbearance by the lender in collecting on the indebtedness. Public confidence in the impartiality and objectivity with which Corporation programs are administered will be strengthened by prohibiting Corporation employees from engaging in financial transactions with institutions insured by the Corporation. The borrowing prohibition also will help to ensure that System institutions and their examiners do not violate the prohibitions in 18 U.S.C. 212 and 213 against the offer and acceptance of certain loans. Finally, limitations on Corporation employees borrowing from regulated institutions will result in fewer employee disqualifications from official matters, thereby avoiding a situation that would have a detrimental effect on the Corporation's ability to carry out its mission.

(b) *Exception.* Section 4001.104(b) serves to clarify that § 4001.104(a) only prohibits covered employees and their spouses and minor children from seeking or obtaining loans or extensions of credit. Thus, a covered employee, or a spouse or minor child of a covered employee, is not prohibited from retaining a loan from a System institution on its original terms if the loan was obtained prior to appointment to a covered employee position at the Corporation. The renewal or renegotiation of a pre-existing loan or extension of credit, however, will be treated as a new loan subject to the prohibition in § 4001.104(a), but an employee may request, pursuant to the waiver provision in § 4001.109, that an exception be made. Employees who retain pre-existing credit, by virtue of their own credit or the credit of a spouse or minor child, will be required to disqualify themselves from participation in the regulation, supervision, examination, audit, visitation, review, investigation, or other particular matter involving the System institution providing the retained credit.

Section 4001.105—Purchase of System Institution Assets

(a) *Prohibition on Purchasing Assets Owned by a System Institution.* Section 4001.105(a) prohibits all Corporation employees, or a spouse or minor child of an employee, from purchasing assets from a System institution or related entity, regardless of how the asset is sold.

(b) *Assets Held or Managed by the Farm Credit System Insurance Corporation or a Receiver or Conservator.* Section 4001.105(b)(1) prohibits all Corporation employees, or a spouse or minor child of an employee, from purchasing assets held or managed by a receiver or conservator for a System institution or by the Corporation as a result of its provision of open bank assistance to troubled System banks, regardless of how the asset is sold. This section prohibits the purchase of such assets held by a receiver or conservator appointed by the FCA prior to January 1, 1993, as well as assets held by the Corporation, which is the only entity FCA may appoint as receiver or conservator of troubled System institutions starting January 1, 1993.

Section 4001.105(b)(2) requires a Corporation employee who is involved in the disposition of receivership or conservatorship assets to disqualify himself from a sales transaction when the employee becomes aware that anyone with whom he holds a covered relationship, as defined in § 2635.502(b)(1) of the Executive Branch-wide Standards, is or will be attempting to acquire receivership or conservatorship assets.

The prohibitions in § 4001.105 are intended to supplement the provisions of 5 CFR 2635.702 regarding use of public office for private gain and to preserve public confidence in the impartiality and objectivity with which Corporation programs and operations are administered. They are necessary to prevent employees from purchasing or appearing to purchase assets on preferential terms, or from benefiting or appearing to benefit from their official positions by purchasing assets based on information obtained in the course of the employees' performance of their official duties. And because the Corporation, acting through its receivership powers, exercises broad powers to seize, hold, and forfeit private

property, the prohibitions will help to preserve the public's confidence that these powers will not be misused to benefit the private interests of a Corporation employee.

Section 4001.106—Restrictions Arising From the Employment of Relatives

Section 4001.106 requires a covered employee to file a report of family member employment with his or her immediate supervisor, the ethics liaison in the office, and the DAEO if the covered employee's spouse or a relative who is dependent on or resides with the covered employee is employed with an entity specified in § 4001.108(a). The employee would be disqualified from participating in any matter involving the employee's spouse or relative, or the employing entity, unless the employee received the appropriate authorization pursuant to the standard in § 2635.502(d) of the Executive Branch-wide Standards.

In effect, § 4001.106 supplements § 2635.502 of the Executive Branch-wide Standards, relating to impartial performance of official duties, and is necessary to ensure that the employment of a close family member by System institutions or related entities does not interfere with the objective and impartial execution of a covered employee's official duties. The requirements of § 4001.106 will help to ensure public confidence in the Corporation's execution of its mission.

Section 4001.107—Involvement in System Institution Board Member Elections

Section 4001.107 prohibits those covered employees who own stock in a System institution, by virtue of retaining a pre-existing loan or extension of credit from a System institution in accordance with § 4001.104(b), from participating in a stockholder nomination or election of a System institution's board members, other than by exercising their right to vote. In addition, this section prohibits covered employees from making any oral or written statements that could be reasonably construed as an attempt to influence a nomination or election.

Section 4001.107 supplements § 2635.702 of the Executive Branch-wide Standards by prohibiting conduct that, given the broad power of the Corporation over System institutions, is likely to give rise to an appearance of misuse of official authority.

Section 4001.108—Outside Employment and Business Activity

(a) *Prohibition.* Section 4001.108(a) supplements § 2635.802 of the Executive Branch-wide Standards by prohibiting covered employees from engaging in specified outside employment and activities. Covered employees are prohibited from performing paid or unpaid services for any System institution or related entity, or any officer, director, employee, or person connected with a System institution or related entity. This regulation is based, in part, on 18 U.S.C. 1909, which prohibits an examiner of a System institution from performing any service for compensation for any System institution or for any person connected therewith, such as persons working on a contract basis for a System institution. It is expanded to cover persons other than examiners in order to ensure that covered employees do not engage in outside activities that are likely to appear to interfere with the objective and impartial performance of their official duties.

(b) *General Requirement for Prior Approval.* Pursuant to § 2635.803 of the Executive Branch-wide Standards, agencies may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities. Under 12 CFR 601.101, which has been administratively adopted by the Corporation, the Corporation has required employees who engage in outside employment to seek prior approval. Based on its finding that this requirement has helped ensure that employees' outside activities conform to applicable statutes and regulations, the Corporation has determined that continuing this requirement is necessary for the purposes of its ethics program. Thus, § 4001.108(b) requires all employees to obtain written approval from the DAEO before engaging in any outside employment, with or without compensation. This section also provides that approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and these supplemental regulations.

(c) *Definition.* The term ''employment'' is broadly defined at § 4001.108(c) to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal, and similar organizations for which no compensation is received other than reimbursement for necessary expenses.

Section 4001.109—Waivers

Section 4001.109 gives the DAEO authority to grant a written waiver of any provision in part 4001 based upon a determination that the waiver is not inconsistent with law and the Executive Branch-wide Standards, and meets the waiver standard established in § 4001.109. An employee may be required under the waiver to disqualify himself or herself from a particular matter or take other appropriate action.

The waiver provision is intended, in appropriate cases, to ease the burden that the supplemental regulations may impose on the private lives of Corporation employees, while ensuring that employees do not engage in actions that may interfere with the objective and impartial execution of their official duties or raise questions about possible misuse of their official positions.

III. Addition of Corporation Employee Responsibilities and Conduct Regulations

On the effective date of the FCA's interim rule, the FCA's regulations on Employee Responsibilities and Conduct, 12 CFR part 601, which had been administratively adopted by the Corporation, will be amended by the FCA to remove §§ 601.100 through 601.102 and to add a residual cross-reference. On the effective date of the Corporation's own interim rule, the Corporation will issue new regulations on Employee Responsibilities and Conduct in 12 CFR part 1401, to provide a cross-reference to the Corporation's own supplemental ethical conduct regulation, to be codified at 5 CFR part 4001, and to the Executive Branch-wide financial disclosure and standards of ethical conduct regulations at 5 CFR parts 2634 and 2635.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), the Corporation finds good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to this interim final rule. The notice and delayed effective date are being waived because these supplemental regulations for Corporation employees and their families concern matters of Corporation organization, practice and procedure and because it is in the public interest that these supplemental regulations be effective as soon as possible. The Corporation is, however, issuing these regulations as an interim rule, with a request for comments, and will consider any comments received when adopting the regulations in final form.

Executive Order 12866

In promulgating these interim supplemental regulations, the Corporation has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This interim rule deals with Corporation organization, management, and personnel matters and is, therefore, not deemed ''significant'' under Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this interim rule will not have significant economic impact on a substantial number of small entities. This rule affects only Federal employees and their immediate families.

Paperwork Reduction Act

It is hereby certified that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 4001

Conflicts of interest, Government employees.

12 CFR Part 1401

Conflicts of interest.

Dated: May 10, 1995.

Floyd Fithian,

Secretary, Farm Credit System Insurance Corporation.

Approved: May 30, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Farm Credit System Insurance Corporation, with the concurrence of the Office of Government Ethics, is amending title 5 and adding a new part 1401 to chapter XIV, title 12 of the Code of Federal Regulations to read as follows:

TITLE 5—[AMENDED]

1. A new chapter XXX, consisting of part 4001, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER XXX—FARM CREDIT SYSTEM INSURANCE CORPORATION

PART 4001—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FARM CREDIT SYSTEM INSURANCE CORPORATION

Sec.

4001.101 General.
4001.102 Definitions.
4001.103 Prohibited financial interests.
4001.104 Prohibited borrowing.
4001.105 Purchase of System institution assets.
4001.106 Restrictions arising from the employment of relatives.
4001.107 Involvement in System institution board member elections.
4001.108 Outside employment and business activity.
4001.109 Waivers.

Authority: 5 U.S.C. 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 2277a–7, 2277a–8; E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.502, 2635.702, 2635.802(a), 2635.803.

§ 4001.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to Farm Credit System Insurance Corporation (Corporation) employees and supplement the Standards of Ethical Conduct for Employees of the executive branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and Corporation guidance and procedures established pursuant to 5 CFR 2635.105.

§ 4001.102 Definitions.

For purposes of this part:

(a) *Covered employee* means:

(1) All examiners who perform work for the Corporation; and

(2) Any other employee specified by Corporation directive whose duties and responsibilities require application of these supplemental regulations to ensure public confidence that the Corporation's programs are conducted impartially and objectively. The Corporation Designated Agency Ethics Official (DAEO) or his or her designee, in consultation with the Chief Operating Officer, will determine which employees are covered for the purpose of this part.

(b) *Related entity* means:

(1) Affiliates defined in section 8.5(e) of the Farm Credit Act of 1971, as amended (Act), 12 U.S.C. 2001 *et seq.*, 12 U.S.C. 2279aa–5;

(2) Affiliates defined in section 8.11(e) of the Act, 12 U.S.C. 2279aa–11;

(3) Service organizations authorized by section 4.25 of the Act, 12 U.S.C. 2211; and

(4) Any other entity owned or controlled by one or more Farm Credit System (System) institution that is not chartered by the Farm Credit Administration (FCA).

(c) *System institution* refers to:

(1) All institutions chartered and regulated by the FCA as described in section 1.2 of the Act, 12 U.S.C. 2002;

(2) The Federal Farm Credit Banks Funding Corporation, established pursuant to section 4.9 of the Act, 12 U.S.C. 2160; and

(3) The Federal Agricultural Mortgage Corporation, established pursuant to section 8.1 of the Act, 12 U.S.C. 2279aa–1.

§ 4001.103 Prohibited financial interests.

(a) *Prohibition.* Except as provided in paragraph (c) of this section and § 4001.109, no covered employee, or spouse or minor child of a covered employee, shall own, directly or indirectly, securities issued by a System institution or related entity.

(b) *Definition of securities.* For purposes of this section, the term ''securities'' includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long and short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles relating to such securities.

(c) *Exceptions.* Nothing in this section prohibits a covered employee, or spouse or minor child of a covered employee, from:

(1) Investing in a publicly traded or publicly available investment fund which, in its prospectus, does not indicate the objective or practice of concentrating its investments in the securities of System institutions or related entities, if the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(2) Having a legal or beneficial interest in a qualified profit sharing, retirement, or similar plan, provided that the plan does not invest more than 25 percent of its funds in securities of System institutions or related entities,

and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the plan;

(3) Owning securities of System institutions held as a result of pre-existing credit, as specified in § 4001.104(b); or

(4) Owning any security pursuant to a waiver granted under § 4001.109.

§ 4001.104 Prohibited borrowing.

(a) *Prohibition on employee borrowing.* Except as provided in paragraph (b) of this section, no covered employee, or spouse or minor child of a covered employee, shall seek or obtain any loan or extension of credit from a System institution or from an officer, director, employee, or related entity of a System institution.

(b) *Exception.* This section does not prohibit a covered employee, or spouse or minor child of a covered employee, from retaining a loan from a System institution on its original terms if the loan was obtained prior to appointment to a covered employee position. For loans retained pursuant to this paragraph, a covered employee shall submit to his or her immediate supervisor, the ethics liaison in his or her office, and the DAEO, a written disqualification from examining, auditing, visiting, reviewing, investigating, or otherwise participating in the regulation or supervision of the System institution that is providing the retained credit. Written disqualification shall be made within 30 days of appointment to a covered employee position on a form prescribed by the DAEO. Any renewal or renegotiation of a pre-existing loan or extension of credit will be treated as a new loan subject to the prohibition in paragraph (a) of this section.

§ 4001.105 Purchase of System institution assets.

(a) *Prohibition on purchasing assets owned by a System institution.* No employee, or spouse or minor child of an employee, shall purchase, directly or indirectly, an asset (such as real property, vehicles, furniture, or similar items) from a System institution or related entity, regardless of how the asset is sold.

(b) *Assets held or managed by the Corporation or a receiver or conservator*—(1) *Prohibition on purchase.* No employee, or spouse or minor child of an employee, shall purchase, directly or indirectly, an asset (such as real property, vehicles, furniture, or similar items) that is held or managed by a receiver or conservator for a System institution or that is held by the Corporation as a result of its provision of open bank assistance to troubled System banks, regardless of how the asset is sold.

(2) *Disqualification.* An employee who is involved in the disposition of receivership or conservatorship assets, or assets acquired by the Corporation as a result of its provision of open bank assistance to troubled System banks, shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that anyone with whom the employee has a covered relationship, as defined in § 2635.502(b)(1) of the Executive Branch-wide Standards, is or will be attempting to acquire such assets. The employee shall provide written notification of the disqualification to his or her immediate supervisor, the ethics liaison in his or her office, and the DAEO.

§ 4001.106 Restrictions arising from the employment of relatives.

When the spouse of a covered employee, or other relative who is dependent on or resides with a covered employee, is employed in a position that the employee would be prohibited from occupying by § 4001.108(a), the employee shall file a report of family member employment with his or her immediate supervisor, the ethics liaison in his or her office, and the DAEO on a form prescribed by the DAEO. Notice shall be made as soon as possible after learning about employment already in existence or in advance of known prospective employment. The employee shall be disqualified from participation in any matter involving the employee's spouse or relative, or the employing entity, unless the DAEO authorizes the employee to participate in the matter using the standard in § 2635.502(d) of the Executive Branch-wide Standards.

§ 4001.107 Involvement in System institution board member elections.

No covered employee who is able to participate in a System institution board election because of System securities owned by virtue of retaining a pre-existing loan or extension of credit from a System institution in accordance with § 4001.104(b) shall take any part, directly or indirectly, in the nomination or election of a board member of a System institution, other than by exercising the right to vote. In addition, a covered employee shall not make any oral or written statement that may be reasonably construed as intending to influence any vote in such nominations or elections.

§ 4001.108 Outside employment and business activity.

(a) *Prohibition.* No covered employee shall perform services, either on a paid or unpaid basis, for any System institution or related entity, or any officer, director, employee, or person connected with a System institution or related entity. Nothing in this section would prohibit covered employees from providing any service that is a part of their official duties.

(b) *General requirement for prior approval.* All employees shall obtain prior written approval before engaging in any outside employment or business activity, with or without compensation, unless the outside activity is exempt from the definition of ''employment'' as set forth in paragraph (c) of this section. An employee proposing to engage in outside employment and business activities is required, prior to commencement, to send a written notice of the proposed employment or activity to the DAEO on a form prescribed by the DAEO. Approval shall be granted only upon a determination that the employment or activity is not expected to involve conduct prohibited by statute, part 2635 of this title, or paragraph (a) of this section.

(c) *Definition.* For purposes of this section, ''employment'' means any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization for which no compensation is received other than reimbursement for necessary expenses.

§ 4001.109 Waivers.

The DAEO may grant a written waiver from any provision of this part based on a determination that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the provision is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which Corporation programs are administered. A waiver

under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

12 CFR CHAPTER XIV—FARM CREDIT SYSTEM INSURANCE CORPORATION

2. Part 1401.1 is added to read as follows:

PART 1401—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Authority: 5 U.S.C. 7301; 12 U.S.C. 2277a–7.

§ 1401.1 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Board members, officers, and other employees of the Farm Credit System Insurance Corporation are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the Farm Credit System Insurance Corporation regulation at 5 CFR part 4001, which supplements the Executive Branch-wide Standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[FR Doc. 95–14215 Filed 6–9–95; 8:45 am]

BILLING CODE 6710–01–P

FARM CREDIT ADMINISTRATION

5 CFR Part 4101

12 CFR Part 601

RIN 3052–AB50, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Farm Credit Administration

AGENCY: Farm Credit Administration (FCA or Agency).

ACTION: Interim rule; request for comments.

SUMMARY: The Farm Credit Administration, with the concurrence of the Office of Government Ethics (OGE), is issuing as an interim rule regulations for the officers and employees of the FCA that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) issued by OGE. The interim rule is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to FCA programs and operations. The interim rule establishes regulations imposing prohibitions on the ownership of certain financial interests; prohibitions on certain forms of borrowing and extensions of credit; limitations on purchases of assets owned by Farm Credit System (System) institutions, conservatorship or receivership assets, or certain assets held by the Farm Credit System Insurance Corporation (Corporation); restrictions arising from the employment of relatives; a prohibition against involvement in Farm Credit System board member elections; and restrictions on outside employment and business activities. The FCA is also repealing its current regulations on these subjects and replacing them with a single section that provides cross-references to the Executive Branch-wide Standards and financial disclosure regulations, as well as these new supplemental regulations.

DATES: This interim rule is effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of effective date will be published in the **Federal Register**. Comments must be submitted on or before July 12, 1995.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all comments will be available for examination by interested parties in Regulation Development, Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

Wendy R. Laguarda, Senior Attorney and Deputy Ethics Official, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4234, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published Executive Branch-wide Standards for employees of the executive branch. *See* 57 FR 35006–35067, as corrected at 57 FR 48557 and FR 52583, with additional grace period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. The Executive Branch-wide Standards are codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The FCA, with OGE's concurrence, has determined, in light of the FCA's unique programs and operations, that the following supplemental regulations, being codified in new chapter XXXI, consisting of part 4101, of 5 CFR, are necessary to implement the Agency's ethics program successfully.

II. Analysis of the Regulations

Section 4101.101—General

Section 4101.101 explains that the regulations contained in the interim rule apply to FCA employees and supplement the Executive Branch-wide Standards. Farm Credit Administration employees must comply with the Executive Branch-wide Standards, the supplemental regulations in this interim rule, and FCA guidance and procedures issued pursuant to the Executive Branch-wide Standards and these supplemental regulations.

Section 4101.102—Definitions

Section 4101.102 identifies and defines the unique terms used in the supplemental regulations. The term ''covered employee'' is intended to include all FCA examiners and any other employee specified as such by FCA directive whose duties and responsibilities require application of these supplemental regulations to ensure public confidence that the FCA's programs are conducted impartially and objectively. The FCA Designated Agency Ethics Official (DAEO) or his or her designee, in consultation with the Office Directors, will determine which employees are covered for purposes of this regulation.

The term ''related entity'' is intended to be broadly interpreted and includes agricultural mortgage marketing facilities established by System institutions, affiliates of the Federal Agricultural Mortgage Corporation, service organizations established by the System banks, and all other entities owned or controlled by one or more System institutions that are not chartered by the FCA.

The term ''System institution'' refers to all institutions chartered and regulated by the FCA, and also includes the Federal Farm Credit Banks Funding Corporation and the Federal Agricultural Mortgage Corporation.

Section 4101.103—Prohibited Financial Interests

(a) *Prohibition.* Section 4101.103(a) prohibits a covered employee, or a

spouse or minor child of a covered employee, from owning securities issued by a System institution or related entity.

The FCA has determined, in accordance with 5 CFR 2635.403(a), that this restriction is necessary, in light of the Agency's sensitive regulatory, supervisory, examination, and enforcement functions, to maintain public confidence in the impartiality and objectivity with which the FCA executes its functions. The restriction will eliminate any reason for regulated entities to be concerned that sensitive information provided to the FCA might be misused for private gain and will avoid widespread disqualification of employees from official matters, which might result in the FCA's inability to fulfill its mission.

(b) *Definition of Securities.* Section 4101.103(b) contains a definition of the term ''securities'' to be applied to § 4101.103. It includes any ''interest in debt or equity instruments'' such as, for example, stocks, bonds, and commercial paper.

(c) *Exceptions.* Section 4101.103(c) includes several exceptions to the prohibition in § 4101.103(a) against owning securities issued by System institutions or related entities. The exceptions are intended to permit ownership interests of a character unlikely to raise questions regarding the objective and impartial performance of FCA employees' official duties or the possible misuse of their positions.

Section 4101.103(c) (1) and (2) permits employees to retain System securities that are in certain funds or plans, the assets of which are managed by an independent third party and are not concentrated in System securities. Such funds may include a publicly traded or publicly available investment fund or an employee's interest in a qualified profit sharing, retirement, or similar plan.

Section 4101.103(c)(3) permits employees to retain securities of System institutions held, in accordance with § 4101.104(b), as a result of pre-existing credit. This exception is necessary because the System institutions are borrower-owned institutions that require eligible borrowers to purchase a minimum amount of an institution's stock as a condition of obtaining a loan. Thus, if an employee has pre-existing credit from a System institution, he or she also will own stock in the institution, which is generally not retired until after the loan is paid off.

Section 4101.103(c)(4) is included as a specific cross-reference to the waiver authority at § 4101.109 which is to be used on a case-by-case basis.

Section 4101.104—Prohibited Borrowing

(a) *Prohibition on Employee Borrowing.* Section 4101.104(a) prohibits a covered employee, or a spouse or minor child of a covered employee, from seeking or obtaining a loan or extension of credit from a System institution or an officer, director, employee, or related entity of a System institution.

Imposed pursuant to 5 CFR 2635.403(a), this prohibition on borrowing is necessary for several reasons. First, it is necessary to prevent covered employees from obtaining or appearing to obtain loans or extensions of credit on preferential terms, or from benefiting or appearing to benefit from their official positions through possible forbearance by the lender in collecting on the indebtedness. Public confidence in the impartiality and objectivity with which FCA programs are administered will be strengthened by prohibiting FCA employees from engaging in financial transactions with institutions regulated by the Agency. The borrowing prohibition also will help to ensure that FCA examiners and regulated institutions do not violate the prohibitions in 18 U.S.C. 212 and 213 against the offer and acceptance of certain loans. Finally, limitations on FCA employees borrowing from regulated institutions will result in fewer employee disqualifications from official matters, thereby avoiding a situation that would have a detrimental effect on the FCA's ability to carry out its mission.

(b) *Exception.* Section 4101.104(b) serves to clarify that § 4101.104(a) only prohibits covered employees and their spouses and minor children from seeking or obtaining loans or extensions of credit. Thus, a covered employee, or a spouse or minor child of a covered employee, is not prohibited from retaining a loan from a System institution on its original terms if the loan was obtained prior to appointment to a covered employee position at FCA. The renewal or renegotiation of a pre-existing loan or extension of credit, however, will be treated as a new loan subject to the prohibition in § 4101.104(a), but an employee may request, pursuant to the waiver provision in § 4101.109, that an exception be made. Employees who retain pre-existing credit, by virtue of their own credit or credit of a spouse or minor child, will be required to disqualify themselves from participation in the regulation, supervision, examination, audit, visitation, review, investigation, or other particular matter involving the System institution providing the retained credit.

Section 4101.105—Purchase of System Institution Assets

(a) *Prohibition on Purchasing Assets Owned by a System Institution.* Section 4101.105(a) prohibits a covered employee, or a spouse or minor child of a covered employee, from purchasing assets from a System institution or related entity. Assets sold by public auction or by a method that ensures that the asset is sold at its fair market value are exempt from this prohibition. Covered employees are required to obtain concurrence from the DAEO, however, about the applicability of this exemption.

(b) *Assets Held or Managed by the Farm Credit System Insurance Corporation or a Receiver or Conservator.* Section 4101.105(b)(1) prohibits a covered employee, or a spouse or minor child of a covered employee, from purchasing assets held or managed by a receiver or conservator for a System institution or by the Corporation as a result of its provision of open bank assistance to troubled System banks regardless of how the asset is sold. This section prohibits the purchase of such assets held by a receiver or conservator appointed by the FCA prior to January 1, 1993, as well as assets held by the Corporation, which is the only entity FCA may appoint as receiver or conservator of troubled System institutions starting January 1, 1993.

Section 4101.105(b)(2) requires a covered employee who is involved in the disposition of receivership or conservatorship assets to disqualify himself from a sales transaction when the employee becomes aware that anyone with whom he holds a covered relationship, as defined in § 2635.502(b)(1) of the Executive Branch-wide Standards, is or will be attempting to acquire receivership or conservatorship assets.

The prohibitions in § 4101.105 are intended to supplement the provisions of 5 CFR 2635.702 regarding use of public office for private gain and to preserve public confidence in the impartiality and objectivity with which FCA programs and operations are administered. They are necessary to prevent employees from purchasing or appearing to purchase assets on preferential terms, or from benefiting or appearing to benefit from their official positions by purchasing assets based on information obtained in the course of the employees' performance of their official duties.

Section 4101.106—Restrictions Arising From the Employment of Relatives

Section 4101.106 requires a covered employee to file a report of family member employment with his or her immediate supervisor, the ethics liaison in the office, and the DAEO if the covered employee's spouse or a relative who is dependent on or resides with the covered employee is employed with an entity specified in § 4101.108(a). The employee would be disqualified from participating in any matter involving the employee's spouse or relative, or the employing entity, unless the employee received the appropriate authorization pursuant to the standard in § 2635.502(d) of the Executive Branch-wide Standards.

In effect, § 4101.106 supplements § 2635.502 of the Executive Branch-wide Standards, relating to impartial performance of official duties, and is necessary to ensure that the employment of a close family member by System institutions or related entities does not interfere with the objective and impartial execution of a covered employee's official duties. The requirements of § 4101.106 will help to ensure public confidence in the FCA's execution of its mission.

Section 4101.107—Involvement in System Institution Board Member Elections

Section 4101.107 prohibits those covered employees who own stock in a System institution, by virtue of retaining a pre-existing loan or extension of credit from a System institution in accordance with § 4101.104(b), from participating in a stockholder nomination or election of a System institution's board members, other than by exercising their right to vote. In addition, this section prohibits covered employees from making any oral or written statements that could be reasonably construed as an attempt to influence a nomination or election.

Section 4101.107 supplements § 2635.702 of the Executive Branch-wide Standards by prohibiting conduct that, given the broad power of the Agency over System institutions, is likely to give rise to an appearance of misuse of official authority.

Section 4101.108—Outside Employment and Business Activity

(a) *Prohibition.* Section 4101.108(a) supplements § 2635.802 of the Executive Branch-wide Standards by prohibiting covered employees from engaging in specified outside employment and activities. Covered employees are prohibited from performing paid or unpaid services for any System institution or related entity, or any officer, director, employee, or person connected with a System institution or related entity. This regulation is based, in part, on 18 U.S.C. 1909, which prohibits an FCA examiner from performing any service for compensation for any System institution or for any person connected therewith, such as persons working on a contract basis for a System institution. It is expanded to cover persons other than examiners in order to ensure that covered employees do not engage in outside activities that are likely to appear to interfere with the objective and impartial performance of their official duties.

(b) *General Requirement for Prior Approval.* Pursuant to § 2635.803 of the Executive Branch-wide Standards, agencies may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities. Under 12 CFR 601.101, FCA has required employees who engage in outside employment to seek prior approval. Based on its finding that this requirement has helped ensure that employees' outside activities conform to applicable statutes and regulations, FCA has determined that continuing this requirement is necessary for the purposes of its ethics program. Thus, § 4101.108(b) requires all employees to obtain written approval from the DAEO before engaging in any outside employment, with or without compensation. This section also provides that approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and these supplemental regulations.

(c) *Definition.* The term ''employment'' is broadly defined at § 4101.108(c) to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal, and similar organizations for which no compensation is received other than reimbursement for necessary expenses.

Section 4101.109—Waivers

Section 4101.109 gives the DAEO authority to grant a written waiver of any provision in part 4101 based upon a determination that the waiver is not inconsistent with law and the Executive Branch-wide Standards, and meets the waiver standard established in § 4101.109. An employee may be required under the waiver to disqualify himself or herself from a particular matter or take other appropriate action.

The waiver provision is intended, in appropriate cases, to ease the burden that the supplemental regulations may impose on the private lives of FCA employees, while ensuring that employees do not engage in actions that may interfere with the objective and impartial execution of their official duties or raise questions about possible misuse of their official positions.

III. Repeal of FCA Employee Responsibilities and Conduct Regulations

On the effective date of the interim rule, the FCA's regulations on Employee Responsibilities and Conduct, 12 CFR part 601, will be amended to remove §§ 601.100–601.102. A new § 601.100 will be added to provide a cross-reference to FCA's supplemental ethical conduct regulation, to be codified at 5 CFR part 4101, and to the Executive Branch-wide financial disclosure and standards of ethical conduct regulations at 5 CFR parts 2634 and 2635. Most sections of 12 CFR part 601 were removed and certain sections reserved by action of the FCA Board, dated January 25, 1993, 58 FR 5919.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), the FCA finds good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to this interim final rule. The notice and delayed effective date are being waived because these supplemental regulations for FCA employees and their families concern matters of Agency organization, practice and procedure and because it is in the public interest that these supplemental regulations be effective as soon as possible. The FCA is, however, issuing these regulations as an interim rule, with a request for comments, and will consider any comments received when adopting the regulations in final form.

Executive Order 12866

In promulgating these interim supplemental regulations, the FCA has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This interim rule deals with Agency organization, management, and personnel matters and

is, therefore, not deemed ''significant'' under Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this interim rule will not have significant economic impact on a substantial number of small entities. This rule affects only Federal employees and their immediate families.

Paperwork Reduction Act

It is hereby certified that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 4101

Conflicts of interests, Government employees.

12 CFR Part 601

Conflict of interests.

Dated: May 10, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration.

Approved: May 30, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Farm Credit Administration, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and part 601 of chapter VI, title 12, of the Code of Federal Regulations to read as follows:

Title 5—[Amended]

1. A new chapter XXXI, consisting of part 4101, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER XXXI—FARM CREDIT ADMINISTRATION

PART 4101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FARM CREDIT ADMINISTRATION

Sec.

4101.101 General.
4101.102 Definitions.
4101.103 Prohibited financial interests.
4101.104 Prohibited borrowing.
4101.105 Purchase of System institution assets.
4101.106 Restrictions arising from the employment of relatives.
4101.107 Involvement in System institution board member elections.
4101.108 Outside employment and business activity.
4101.109 Waivers.

Authority: 5 U.S.C. 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 2245(c)(2)(C), 2252; E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.502, 2635.702, 2635.802(a), 2635.803.

§ 4101.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to Farm Credit Administration (FCA) employees and supplement the Standards of Ethical Conduct for Employees of the executive branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and Agency guidance and procedures established pursuant to 5 CFR 2635.105.

§ 4101.102 Definitions.

For purposes of this part:

(a) *Covered employee* means:

(1) Examiners; and

(2) Any other employee specified by FCA directive whose duties and responsibilities require application of these supplemental regulations to ensure public confidence that the FCA's programs are conducted impartially and objectively. The FCA Designated Agency Ethics Official (DAEO) or his or her designee, in consultation with the Office Directors, will determine which employees are covered for the purpose of this part.

(b) *Related entity* means:

(1) Affiliates defined in section 8.5(e) of the Farm Credit Act of 1971, as amended (Act), 12 U.S.C. 2001 *et seq.*, 12 U.S.C. 2279aa–5;

(2) Affiliates defined in section 8.11(e) of the Act, 12 U.S.C. 2279aa-11;

(3) Service organizations authorized by section 4.25 of the Act, 12 U.S.C. 2211; and

(4) Any other entity owned or controlled by one or more Farm Credit System (System) institution that is not chartered by the FCA.

(c) *System institution* refers to:

(1) All institutions chartered and regulated by the FCA as described in section 1.2 of the Act, 12 U.S.C. 2002;

(2) The Federal Farm Credit Banks Funding Corporation, established pursuant to section 4.9 of the Act, 12 U.S.C. 2160; and

(3) The Federal Agricultural Mortgage Corporation, established pursuant to section 8.1 of the Act, 12 U.S.C. 2279aa–1.

§ 4101.103 Prohibited financial interests.

(a) *Prohibition.* Except as provided in paragraph (c) of this section and § 4101.109, no covered employee, or spouse or minor child of a covered employee, shall own, directly or indirectly, securities issued by a System institution or related entity.

(b) *Definition of securities.* For purposes of this section, the term ''securities'' includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long and short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles relating to such securities.

(c) *Exceptions.* Nothing in this section prohibits a covered employee, or spouse or minor child of a covered employee, from:

(1) Investing in a publicly traded or publicly available investment fund which, in its prospectus, does not indicate the objective or practice of concentrating its investments in the securities of System institutions or related entities, and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(2) Having a legal or beneficial interest in a qualified profit sharing, retirement, or similar plan, provided that the plan does not invest more than 25 percent of its funds in securities of System institutions or related entities, and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the plan;

(3) Owning securities of System institutions held as a result of pre-existing credit, as specified in § 4101.104(b); or

(4) Owning any security pursuant to a waiver granted under § 4101.109.

§ 4101.104 Prohibited borrowing.

(a) *Prohibition on employee borrowing.* Except as provided in paragraph (b) of this section, no covered employee, or spouse or minor child of a covered employee, shall seek or obtain any loan or extension of credit from a System institution or from an officer, director, employee, or related entity of a System institution.

(b) *Exception.* This section does not prohibit a covered employee, or spouse or minor child of a covered employee, from retaining a loan from a System institution on its original terms if the loan was obtained prior to appointment

to a covered employee position. For loans retained pursuant to this paragraph, a covered employee shall submit to his or her immediate supervisor, the ethics liaison in his or her office, and the DAEO, a written disqualification from examining, auditing, visiting, reviewing, investigating, or otherwise participating in the supervision of the System institution that is providing the retained credit. Written disqualification shall be made within 30 days of appointment to a covered employee position on a form prescribed by the DAEO. Any renewal or renegotiation of a pre-existing loan or extension of credit will be treated as a new loan subject to the prohibition in paragraph (a) of this section.

§ 4101.105 Purchase of System institution assets.

(a) *Prohibition on purchasing assets owned by a System institution.* No covered employee, or spouse or minor child of a covered employee, shall purchase, directly or indirectly, an asset (such as real property, vehicles, furniture, or similar items) from a System institution or related entity, unless it is sold at a public auction or by other means which assure that the selling price is the asset's fair market value. A covered employee shall obtain concurrence from the DAEO about whether a proposed purchase of a System institution asset is proper.

(b) *Assets held or managed by the Farm Credit System Insurance Corporation or a receiver or conservator*—(1) *Prohibition on purchase.* No covered employee, or spouse or minor child of a covered employee, shall purchase, directly or indirectly, an asset (such as real property, vehicles, furniture, or similar items) that is held or managed by a receiver or conservator for a System institution or that is held by the Farm Credit System Insurance Corporation (Corporation) as a result of its provision of open bank assistance to troubled System banks regardless of how the asset is sold.

(2) *Disqualification.* A covered employee who is involved in the disposition of receivership or conservatorship assets, or assets acquired by the Corporation as a result of its provision of open bank assistance to troubled System banks, shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that anyone with whom the employee has a covered relationship, as defined in § 2635.502(b)(1) of the Executive Branch-wide Standards, is or will be attempting to acquire such assets. The employee shall provide written notification of the disqualification to his or her immediate supervisor, the ethics liaison in his or her office, and the DAEO.

§ 4101.106 Restrictions arising from the employment of relatives.

When the spouse of a covered employee, or other relative who is dependent on or resides with a covered employee, is employed in a position that the employee would be prohibited from occupying by § 4101.108(a), the employee shall file a report of family member employment with his or her immediate supervisor, the ethics liaison in his or her office, and the DAEO on a form prescribed by the DAEO. Notice shall be made as soon as possible after learning about employment already in existence or in advance of known prospective employment. The employee shall be disqualified from participation in any matter involving the employee's spouse or relative, or the employing entity, unless the DAEO authorizes the employee to participate in the matter using the standard in § 2635.502(d) of the Executive Branch-wide Standards.

§ 4101.107 Involvement in System institution board member elections.

No covered employee who is able to participate in a System institution board election because of System securities owned by virtue of retaining a pre-existing loan or extension of credit from a System institution in accordance with § 4101.104(b) shall take any part, directly or indirectly, in the nomination or election of a board member of a System institution, other than by exercising the right to vote. In addition, a covered employee shall not make any oral or written statement that may be reasonably construed as intending to influence any vote in such nominations or elections.

§ 4101.108 Outside employment and business activity.

(a) *Prohibition.* No covered employee shall perform services, either on a paid or unpaid basis, for any System institution or related entity, or any officer, director, employee, or person connected with a System institution or related entity. Nothing in this section would prohibit covered employees from providing any service that is a part of their official duties.

(b) *General requirement for prior approval.* All employees shall obtain prior written approval before engaging in any outside employment or business activity, with or without compensation, unless the outside activity is exempt from the definition of ''employment'' as set forth in paragraph (c) of this section. An employee proposing to engage in outside employment and business activities is required, prior to commencement, to send a written notice of the proposed employment or activity to the DAEO on a form prescribed by the DAEO. Approval shall be granted only upon a determination that the employment or activity is not expected to involve conduct prohibited by statute, part 2635 of this title, or paragraph (a) of this section.

(c) *Definition.* For purposes of this section, ''employment'' means any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization for which no compensation is received other than reimbursement for necessary expenses.

§ 4101.109 Waivers.

The DAEO may grant a written waiver from any provision of this part based on a determination that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the provision is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which Agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

12 CFR CHAPTER VI—FARM CREDIT ADMINISTRATION

2. Part 601 is revised to read as follows:

PART 601—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Authority: 5 U.S.C. 7301; 12 U.S.C. 2243, 2252.

§ 601.100 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Board members, officers, and other employees of the Farm Credit Administration are subject to the

Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the Farm Credit Administration regulation at 5 CFR part 4101, which supplements the Executive Branch-wide Standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[FR Doc. 95–14216 Filed 6–9–95; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[FV95–985–2FIR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1994–95 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule increasing the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1994–95 marketing year. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. The Committee recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

EFFECTIVE DATE: June 1, 1994, through May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–8139; or Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule finalizes an interim final rule that increased the quantity of Class 3 spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1994–95 marketing year, which ends on May 31, 1995. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are 8 spearmint oil handlers subject to regulation under the order and approximately 260 producers of spearmint oil in the regulated production area. Of the 260 producers, approximately 160 producers hold Class 1 (Scotch) spearmint oil allotment base, and approximately 145 producers hold Class 3 (Native) spearmint oil allotment base. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A minority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations are not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

This final rule finalizes an interim final rule increasing the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1994–95 marketing year, which ends on May 31, 1995. This rule increases the salable quantity from 1,287,680 pounds to 1,358,404 pounds and the allotment percentage from 66 percent to 70 percent for Native spearmint oil for the 1994–95 marketing year.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The initial salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1994–95 marketing year were recommended by the Committee at its October 6, 1993, meeting. The Committee recommended

salable quantities of 723,326 pounds and 897,388 pounds, and allotment percentages of 41 percent and 46 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the December 21, 1993, issue of the **Federal Register** (58 FR 67378). Comments on the proposed rule were solicited from interested persons until January 20, 1994. No comments were received. Accordingly, based upon analysis of available information, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1994–95 marketing year was published in the March 16, 1994, issue of the **Federal Register** (59 FR 12151).

At its June 14, 1994, teleconference meeting, the Committee recommended that the salable quantity and allotment percentage for Native spearmint oil for the 1994–95 marketing year be increased. The Committee recommended that the Native spearmint oil salable quantity be increased from 897,388 pounds to 1,092,577 pounds, and that the allotment percentage, based on a revised total allotment base of 1,951,032 pounds, be increased from 46 to 56 percent resulting in a 195,189 pound increase in the salable quantity.

An interim final rule was published in the August 26, 1994, **Federal Register** (59 FR 44028). Comments on the interim rule were solicited from interested persons until September 26, 1994. No comments were received.

At its October 5, 1994, meeting, the Committee recommended that the salable quantities for Scotch and Native spearmint oils for the 1994–95 marketing year be increased from 723,326 pounds to 811,516 pounds, and from 1,092,577 pounds to 1,287,680 pounds, respectively. Based on a revised total allotment base of 1,763,795 pounds, the Committee recommended that the allotment percentage for Scotch spearmint oil be increased from 41 percent to 46 percent, resulting in an 88,190 pound increase in the salable quantity. Further, based on the revised total allotment base published in the August 26, 1994, **Federal Register** (59 FR 44028), the Committee recommended that the allotment percentage for Native spearmint oil be increased from 56 percent to 66 percent, resulting in a 195,103 pound increase in the salable quantity.

An interim final rule amending the August 26, 1994, rule was published in the October 31, 1994, **Federal Register** (59 FR 54376). Comments on the interim rule were solicited from interested persons until November 30, 1994. No comments were received.

Accordingly, based upon an analysis of available information, a final rule finalizing the 1994–95 salable quantities and allotment percentages was published in the February 2, 1995, **Federal Register** (60 FR 6392).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, at its February 22, 1995, meeting, the Committee recommended, with one member voting in opposition, that the salable quantity for Native spearmint oil for the 1994–95 marketing year be increased from 1,287,680 pounds to 1,358,404 pounds. The member voting in opposition favored the establishment of a lower salable quantity that would have resulted in a lower allotment percentage. Based on the revised total allotment base of 1,951,032 pounds, the allotment percentage for Native spearmint oil is increased from 66 percent to 70 percent, resulting in a 70,724 pound increase in the salable quantity.

Native Spearmint Oil Recommendations

(1) Salable Quantity
October 6, 1993—897,388 pounds
June 14, 1994—1,092,577 pounds
October 5, 1994—1,287,680 pounds
February 22, 1995—1,358,404 pounds
(2) Total Allotment Base
October 6, 1993—1,950,843 pounds
June 14, 1994—1,951,032 pounds
October 5, 1994—1,951,032 pounds
February 22, 1995—1,951,032 pounds
(3) Allotment Percentage
October 6, 1993—46 percent
June 14, 1994—56 percent
October 5, 1994—66 percent
February 22, 1995—70 percent

In making this latest recommendation the Committee considered all available information on supply and demand.

As of February 22, 1995, the Committee reports that of the 1994–95 marketing year Scotch and Native spearmint oil salable quantities of 811,516 pounds and 1,287,680 pounds, respectively, 154,375 pounds and 70,840 pounds remained available for handling. Handlers have indicated that the available supply of Scotch spearmint oil is adequate to meet anticipated demand through May 31, 1995. However, handlers have indicated that demand for Native spearmint oil may be as high as 100,000 pounds for the remainder of this marketing year. This level of demand was not anticipated by the Committee when it made its initial recommendation for the establishment of the Scotch and Native spearmint oil salable quantities and allotment percentages for the 1994–95 marketing year, nor was it foreseen when the Committee made its June 14 and October 5, 1994, recommendations for increasing the Native spearmint oil salable quantity and allotment percentage.

The recommended salable quantity of 1,358,404 pounds of Native spearmint oil (an increase of 70,724 pounds), combined with the June 1, 1994, carry-in of 19,139 pounds, results in a revised 1994–95 available supply of 1,377,543 pounds. The revised available supply of Native spearmint oil is approximately 300,000 pounds higher than the annual average of sales for the past five years. The Committee anticipates that foreseeable demand for Native spearmint oil will be adequately met for the remainder of the 1994–95 marketing year.

The Department, based on its analysis of available information, has determined that an allotment percentage of 70 percent should be established for Native spearmint oil for the 1994–95 marketing year. This percentage will provide an increased salable quantity of 1,358,404 pounds of Native spearmint oil.

An interim final rule concerning this action was issued on March 31, 1995, and was published in the **Federal Register** (60 FR 17434). Comments were solicited from interested persons through May 8, 1995. No comments were received.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the prior proposed, final, and interim final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1994–95 marketing year, the Committee's recommendation and other available information, it is found that to revise § 985.213 (60 FR 6392) to change the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This final rule finalizes an interim final rule increasing the quantity of Native spearmint oil that may be marketed during the marketing year beginning on June 1, 1994; and (2) Handlers are aware of this rule which was recommended by the Committee at

a public meeting and published in the **Federal Register** as an interim final rule with a 30-day comment period.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

Accordingly, the interim final rule amending 7 CFR part 985 which was published at 60 FR 17434 on April 6, 1995, is adopted as a final rule without change.

Dated: June 6, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–14278 Filed 6–9–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 985

[FV95–985–3FIR]

Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1995–96 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that increased the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1995–96 marketing year. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. The Committee recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

EFFECTIVE DATE: Effective on July 12, 1995.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–8139; or Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of California, Nevada, Montana, and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule finalizes an interim final rule that increased the quantity of Class 3 spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1995–96 marketing year, which ends on May 31, 1996. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are 8 spearmint oil handlers subject to regulation under the order and approximately 260 producers of spearmint oil in the regulated production area. Of the 260 producers, approximately 160 producers hold Class 1 (Scotch) spearmint oil allotment base, and approximately 145 producers hold Class 3 (Native) spearmint oil allotment base. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A minority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity and whose income from farming operations are not exclusively dependent on the production of spearmint oil. The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for approximately 75 percent of the annual U.S. production of spearmint oil.

This final rule finalizes an interim final rule that increased the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1995–96 marketing year, which ends on May 31, 1996. The interim final rule increased the salable quantity from 906,449 pounds to 1,004,976 pounds and the allotment percentage from 46 percent to 51 percent for Native spearmint oil for the 1995–96 marketing year.

The interim final rule was issued on April 7, 1995, and published in the **Federal Register** (60 FR 18950, April 14, 1995), with an effective date of April 14, 1995. That rule amended section 985.214 of the rules and regulations in effect under the order. The rule provided a 30-day comment period which ended May 15, 1995. No comments were received.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 1995–96 marketing year were recommended by the Committee at its October 5, 1994, meeting. The Committee recommended salable quantities of 908,531 pounds and 906,449 pounds, and allotment percentages of 51 percent and 46 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the December 15, 1994, issue of the **Federal Register** (59 FR 64625). Comments on the proposed rule were solicited from interested persons until January 17, 1995. No comments were received. Accordingly, based upon analysis of available information, a final rule establishing the Committee's recommendation as the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1995–96 marketing year was published in the February 15, 1995, issue of the **Federal Register** (60 FR 8524).

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, at its February 22, 1995, meeting, the Committee recommended, with one member voting in opposition, that the salable quantity for Native spearmint oil for the 1995–96 marketing year be increased from 906,449 pounds to 1,004,976 pounds. The member voting in opposition did not favor an increase in the salable quantity and allotment percentage because he believed it was too early to determine what the market conditions will be during the 1995–96 marketing year. Based on the total allotment base of 1,970,542 pounds, the allotment percentage for Native spearmint oil is increased from 46 percent to 51 percent, resulting in a 98,527 pound increase in the salable quantity.

Native Spearmint Oil Recommendations

(1) Salable Quantity

October 5, 1994.....906,449 pounds
February 22, 1995.....1,004,976 pounds

(2) Allotment Base

October 5, 1994.....1,970,542 pounds
February 22, 1995.....1,970,542 pounds

(3) Allotment Percentage

October 5, 1994.....46 percent
February 22, 1995.....51 percent

In making this latest recommendation, the Committee considered all available information on supply and demand. The 1995–96 marketing year begins on June 1, 1995. Handlers have indicated that the available supply of Scotch spearmint oil appears adequate to meet anticipated demand through May 31, 1996. Handlers have indicated, however, that demand for Native spearmint oil is currently fairly strong and anticipate that this trend will likely continue into the next marketing year. Based upon this strengthening demand, as well as historical data that indicates the annual average of sales for the last eight years is 1,006,512 pounds, the Committee believes that an increase in the salable quantity to 1,004,976 pounds is necessary to meet anticipated demand. This level of demand was not anticipated by the Committee when it made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 1995–96 marketing year.

The recommended salable quantity of 1,004,976 pounds of Native spearmint oil (an increase of 98,527 pounds), combined with a revised estimated carry-in of 100,000 pounds on June 1, 1995, results in a revised 1995–96 estimated available supply of 1,104,976 pounds. Thus, the revised estimate for the 1995–96 marketing year Native spearmint oil available supply is approximately 100,000 pounds higher than the annual average of sales for the past eight years. With this revision, the Committee anticipates that demand for Native spearmint oil during the 1995–96 marketing year will be adequately met.

The Department, based on its analysis of available information, has determined that an allotment percentage of 51 percent should be established for Native spearmint oil for the 1995–96 marketing year. This percentage will provide an increased salable quantity of 1,004,976 pounds of Native spearmint oil.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the prior proposed, interim final and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1995–96 marketing year, the Committee's recommendation and other available information, it is found that to finalize the interim final rule revising § 985.214 (60 FR 8524) of the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

Accordingly, the interim final rule amending 7 CFR part 985 which was published at 60 FR 18950 on April 14, 1995, is adopted as a final rule without change.

Dated: June 6, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–14280 Filed 6–9–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 985

[Docket No. FV95–985–1FIR]

Spearmint Oil Produced in the Far West; Expenses and Assessment Rate for the 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate for the Spearmint Oil Administrative Committee (Committee) under Marketing Order No. 985 for the 1995–96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: June 1, 1995, through May 31, 1996.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–5127; or Robert Curry, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220

SW. Third Avenue, room 369, Portland, Oregon 97204, telephone: (503)326–2724.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, spearmint oil produced in the Far West is subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable oil produced during the 1995–96 fiscal year, beginning June 1, 1995, through May 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are 8 handlers of spearmint oil regulated under the marketing order each season and approximately 260 spearmint oil producers in the Far West. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A minority of these producers and handlers may be classified as small entities.

The marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable spearmint oil handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of spearmint oil. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of spearmint oil. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee met on February 22, 1995, and unanimously recommended a total expense amount of $233,272 for its 1995–96 budget. This is $4,567 less in expenses than the 1994–95 budget.

The Committee also unanimously recommended an assessment rate of $.10 per pound for the 1995–96 fiscal year, which is $.01 more than the assessment rate from the 1994–95 fiscal year. The assessment rate, when applied to anticipated shipments of 2,000,000 pounds from the 1995–96 spearmint oil production, would yield $200,000 in assessment income. This, along with approximately $24,272 from the Committee's authorized reserves, and $9,000 interest will be adequate to cover estimated expenses.

Major expense categories for the 1995–96 fiscal year include $101,300 for salaries, $20,000 for market development, and $23,000 for travel. Funds in the reserve at the beginning of the 1995–96 fiscal year are estimated at $160,000, which is within the maximum permitted by the order of one fiscal year's expenses.

An interim final rule was issued on March 28, 1995, and published in the **Federal Register** on April 3, 1995 (60 FR 16770). That rule provided a 30-day comment period which ended May 3, 1995. No comments were received.

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

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal year starts on June 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable spearmint oil handled during the fiscal year. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule with a 30-day comment period. No comments were received and the interim final rule is adopted without change.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

Accordingly, the interim final rule amending 7 CFR part 985 which was

published at 60 FR 16770 on April 3, 1995, is adopted a final rule without change.

Dated: June 6, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–14281 Filed 6–9–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93N–0283]

RIN 0905–AD89

Food Labeling; Placement of the Nutrition Label on Food Packages; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of April 5, 1995 (59 FR 17202). The document amended food labeling regulations to provide increased flexibility in the placement of the nutrition label on packaged foods. The document was published with some inadvertent errors. This document corrects those errors.

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Arletta M. Beloian, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5430.

SUPPLEMENTARY INFORMATION: In the last sentence of § 101.9(j)(17) (21 CFR 101.9(j)(17)), in the codified section of the final rule, the words ''placement of'', which were included in the sentence as noted in comment ''2.'' of the preamble discussion, were inadvertently omitted. FDA is correcting § 101.9(j)(17) to include ''placement of'' preceding the words ''the nutrition label'' in that sentence. Further, to provide for parallel construction in the preceding sentence, FDA is also adding ''placement of'' preceding ''the nutrition label.''

In FR Doc. 95–8067, appearing in page 17202 in the **Federal Register** of Wednesday, April 5, 1995, the following correction is made:

§ 101.9 [Corrected]

On page 17205, in the third column, in § 101.9 (j)(17), under amendment ''3.'', in lines 15 and 19, the words ''the placement of'' are added before the word ''the''.

Dated: June 6. 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–14298 Filed 6–9–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AB62, 1840–AB81, 1840–AB97, 1840–AB99, 1840–AC12

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Family Education Loan Program to add the Office of Management and Budget (OMB) control number to certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved, and therefore affected parties must comply with them.

EFFECTIVE DATE: These regulations are effective on July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela Moran, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 3053, ROB–3), Washington, D.C. 20202. Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Final regulations for the Federal Family Education Loan Program were published in the **Federal Register** on June 16, 1994 (59 FR 31084), June 24, 1994 (59 FR 32862), June 28, 1994 (59 FR 33334), June 29, 1994 (59 FR 33580) and November 29, 1994 (59 FR 61210). Compliance with information collection requirements in certain sections of these regulations was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1980. OMB approved the information collection requirements in the regulations on August 8, 1994 and December 5, 1994. The information collection requirements in these regulations will therefore become effective with all of the other provisions of the regulations on July 1, 1995.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B), that public comment on the regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: June 6, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§§ 682.215, 682.405, and 682.415 [Amended]

2. Sections 682.215, 682.405, and 682.415, are amended by adding the OMB control number following each section to read as follows:

(Approved by the Office of Management and Budget under control number 1840–0538)

§§ 682.205, 682.209, 682.210, 682.211, 682.401, 682.409, 682.602, 682.604, and 682.605 [Amended]

3. Sections 682.205, 682.209, 682.210, 682.211, 682.401, 682.409, 682.602, 682.604, and 682.605 are amended by republishing the OMB control number following each section to read as follows:

(Approved by the Office of Management and Budget under control number 1840–0538)

[FR Doc. 95–14309 Filed 6–9–95; 8:45 am]

BILLING CODE 4000–01–P

34 CFR Parts 690

RIN 1840–AB73

Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Pell Grant Program to add the Office of Management and Budget (OMB) control number to certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved, and therefore affected parties must comply with them.

EFFECTIVE DATE: These regulations are effective on July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Greg Gerrans, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 3042, ROB–3), Washington, D.C. 20202–5447. Telephone (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Final regulations for the Federal Pell Grant Program were published in the **Federal Register** on November 1, 1994 (59 FR 54718). Compliance with information collection requirements in certain sections of these regulations was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1980. OMB approved the information collection requirements in the regulations on December 5, 1994. The information collection requirements in these regulations will therefore become effective with all of the other provisions of the regulations on July 1, 1995.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B), that public comment on the regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 690

Administrative practice and procedure, Colleges and universities, Education, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

Dated: June 6, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends part 690 of title 34 of the Code of Federal Regulations as follows:

PART 690—FEDERAL PELL GRANT PROGRAM

1. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1071a, unless otherwise noted.

§ 690.75 [Amended]

2. Section 690.75 is amended by adding the OMB control number following the section to read as follows:

(Approved by the Office of Management and Budget under control number 1840–0681)

§ 690.12, 690.13, 690.82 [Amended]

3. Sections 690.12, 690.13, and 690.82 are amended by revising the OMB control number following each section to read as follows:

(Approved by the Office of Management and Budget under control number 1840–0681)

[FR Doc. 95–14308 Filed 6–9–95; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[NM–25–1–6980; FRL–5218–1]

Designation of Area for Air Quality Planning Purposes; New Mexico; Designation of Sunland Park Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to section 107(d)(3) of the Clean Air Act (CAA), the EPA is taking final action to redesignate a portion of Dona Ana County, New Mexico (i.e. the Sunland Park area) from unclassifiable/attainment to nonattainment for the ozone National Ambient Air Quality Standards (NAAQS). The redesignation is based upon violations of the ozone NAAQS which were monitored from 1992–1994.

EFFECTIVE DATE: July 12, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the addresses listed below. The interested persons wanting to examine these documents should make an appointment at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733

New Mexico Environment Department, Air Monitoring & Control Strategy Bureau, 1190 St. Francis Drive, room So. 2100, Santa Fe, New Mexico 87503

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch (6T-A), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7258.

SUPPLEMENTARY INFORMATION:

Background

The CAA authorizes the EPA to revise the designation of current ozone areas from unclassifiable/attainment to nonattainment on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the EPA deems appropriate (see section 107(d)(3) of the CAA).

Following the process outlined in section 107(d)(3) of the CAA, on December 16, 1994, the Regional Administrator of the EPA Region 6 notified the Governor of New Mexico that the EPA believed the Sunland Park area should be redesignated as nonattainment for ozone. Under section 107(d)(3)(B) of the CAA, the Governor of New Mexico was required to submit to the EPA the designation considered appropriate for the Sunland Park area within 120 days after the EPA's notification. The EPA received the State's response for the Sunland Park area on February 6, 1995 (letter dated January 30, 1995). Following receipt of the Governor's letter, the EPA proceeded to propose the nonattainment designation for the Sunland Park area (see 60 **Federal Register** (FR) 17756–17758, April 7, 1995). The EPA now is taking final action on the proposed nonattainment redesignation. Based upon the EPA's review of the State's January 30, 1995, letter for the Sunland Park area, the EPA is finalizing a redesignation to nonattainment which is consistent with the request submitted by the Governor of New Mexico.

Section 107(d)(1)(A) of the CAA sets out definitions of nonattainment, attainment, and unclassifiable. A nonattainment area is defined as any area that does not meet (or that significantly contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for ozone (see section 107(d)(1)(A)(i) of the

CAA)[1]. Thus, in determining the appropriate boundaries for the nonattainment area finalized in this action, the EPA has considered not only the area where the violations of the ozone NAAQS are occurring, but nearby areas which significantly contribute to such violations.

Response to Public Comments

In the April 7, 1995, proposal FR action, the EPA requested public comments on all aspects of the proposal, including the appropriateness of the proposed designation and the scope of the proposed boundaries. The EPA received no comments on the proposal FR action.

Final Action

As noted above, pursuant to section 107(d)(3) of the CAA, the EPA is authorized to initiate the redesignation of areas as nonattainment for ozone. Based on the ozone air quality monitoring data for the Sunland Park monitoring station, the EPA notified the Governor of New Mexico on December 16, 1994, that the Sunland Park area should be redesignated from unclassifiable/attainment to nonattainment for the ozone NAAQS. Ozone monitoring began in Sunland Park on June 15, 1992. Seven measured exceedances of the ozone NAAQS have been recorded at the monitoring site, ranging from a low of .126 parts per million (ppm) to a high of .140 ppm. The seven exceedances represent a violation of the ozone NAAQS (see 40 Code of Federal Regulations (CFR) 50.9). Since less than three years of data have been collected at the Sunland Park monitoring site, the EPA design value (used to determine ozone attainment status) for the site is the third highest ozone value recorded—.136 ppm. Therefore, the Sunland Park ozone nonattainment area is classified as a marginal ozone nonattainment area according to the classification scheme set forth in section 181 of the CAA. Due to the marginal classification, the attainment date for the Sunland Park ozone nonattainment area will be three years from the effective date of this **Federal Register** final action establishing the nonattainment designation and classification.

In response to the EPA's December 16, 1994, letter, on January 30, 1995, the Governor of New Mexico concurred with the EPA that a small area of southern Dona Ana County, including Sunland Park, be redesignated as nonattainment for the ozone NAAQS. However, the Governor did not concur with the proposed nonattainment boundaries in one respect, proposing an alternate western boundary for the nonattainment area. Based on the information provided by the Governor, including monitoring data, the EPA believes that the nonattainment boundaries submitted by the Governor are appropriate. The technical information supporting the redesignation request and the boundary selections are available for public review at the addresses indicated above.

Significance of Final Action for the Sunland Park Area, New Mexico

Within 24 months after the effective date of this final action on the nonattainment redesignation, New Mexico must submit an implementation plan for the Sunland Park ozone nonattainment area meeting the requirements of part D, title I of the CAA (see section 182(a) of the CAA).

The CAA provides that the plan for the area must contain, among other things, the following items:

1. A comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 172(c)(3) of the CAA, in accordance with guidance provided by the EPA. The pollutants inventoried must include volatile organic compounds (VOC), nitrogen oxides (NO_X) and carbon monoxide. No later than the end of each three year period after submission of the initial inventory, until the area is redesignated to attainment, the State must submit a revised inventory meeting all EPA requirements (see section 182(a)(1) of the CAA).

2. Requirements that the owner or operator of each stationary source of NOx or VOC provide the State with a statement, in such form as the EPA may prescribe, for classes or categories of sources, showing the actual emissions of NOx and VOC from that source. The first such statement must be submitted to the State within three years after the effective date of this final action establishing the nonattainment designation. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. The State may waive the emission statement requirement for any class or category of stationary sources which emits less than 25 tons per year of VOC or NOx, if the State, in its initial and periodic emission inventories, provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the EPA, or other methods acceptable to the EPA (see section 182(a)(3)(B) of the CAA).

3. A revised nonattainment new source review permitting program meeting the requirements of sections 172(c)(5) and 173 of the CAA, including the requirement that the ratio of total emission reductions of VOC to total increased emissions of such air pollutant shall be at least 1.1 to 1 (see section 182(a)(4) of the CAA).

4. Revised conformity rules (Regulations 20 NMAC 2.98 and 20 NMAC 2.99) if necessary (see sections 176 and 182 of the CAA).

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to nonattainment under section 107(d)(3) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the planning status of a geographical area and does not, in itself, impose any regulatory requirements on sources. To the extent that the area must adopt new regulations, based on its nonattainment status, the EPA will review, as appropriate, the effect of those actions on small entities at the time the State submits those regulations. I certify that approval of the redesignation request will not affect a substantial number of small entities.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 25, 1995.

Jane N. Saginaw,

Regional Administrator.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.332 the ozone table is amended by revising the entry ''AQCR 153 El Paso-Las Cruces-Alamogordo'' to read as follows:

§ 81.332 New Mexico.

* * * * *

NEW MEXICO—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* *	*	* *	*	*
AQCR 153 El Paso-Las Cruces-Alamogordo	.....	.....	.....	
Dona Ana County (part)—The area bounded by the New Mexico-Texas State line on the east, the New Mexico-Mexico international line on the south, the Range 3E-Range 2E line on the west, and the N3200 latitude line on the north.	July 12, 1995	Nonattainment	July 12, 1995	Nonattainment.
Remainder of Dona Ana County	.....	Unclassifiable/Attainment.	.....	
Lincoln County	.....	Unclassifiable/Attainment.	.....	
Otero County	.....	Unclassifiable/Attainment.	.....	
Sierra County	.....	Unclassifiable/Attainment.	.....	
* *	*	* *	*	*

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95–14339 Filed 6–9–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 501

[Docket No. 95–01]

Filing of Tariffs by Marine Terminal Operators; Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce; Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States; Service Contracts; Correction

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule which was published May 23, 1995 (60 FR 27228). The final rule pertained to the removal of requirements for tariff filing in paper format.

EFFECTIVE DATE: June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573–0001, (202) 523–5796.

SUPPLEMENTARY INFORMATION: The final rule in this proceeding removed the Commission's regulations regarding paper tariff filing, and amended various other Commission rules to delete references to the removed regulations. This corrects an inadvertent omission in the language of the revision to the second sentence of paragraph (h) introductory text of § 501.5 of Title 46 CFR. On page 27229, 1st column the affected provision should read:

(h) * * * These programs carry out the provisions of the Shipping Act, 1916; the Intercoastal Shipping Act, 1933; the Shipping Act of 1984; and Pub. L. 89–777, as implemented under Parts 510, 514, 540, 552, 582 and 583 of this chapter. * * *

Joseph C. Polking,

Secretary.

[FR Doc. 95–14336 Filed 6–9–95; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

48 CFR Chapter 14

RIN 1090–AA50

Department of the Interior Acquisition Regulation

AGENCY: Office of the Secretary, Interior.

ACTION: Final Rule; removal.

SUMMARY: This document amends the Department of the Interior Acquisition Regulation by removing 16 parts. The complete Department of the Interior Acquisition Regulation (DIAR) consists of 42 parts that supplement or implement the Federal Acquisition Regulation (FAR), 23 of which now appear in the CFR. This action removes 16 of these 23 codified parts. The material being removed deals with procedures that do not have a significant effect outside the agency. The parts that are not obsolete will be retained as internal procedures.

EFFECTIVE DATE: July 12, 1995.

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb, Chief, Acquisition and Assistance Division, (202) 208–3433.

SUPPLEMENTARY INFORMATION: Under the auspices of the National Performance Review, a thorough review of the DIAR was conducted. The review revealed unnecessary regulation and excessively burdensome procedures. In the interests of streamlining processes, empowering contracting personnel to act responsibly without excessive oversight and improving relationships with contractors, nonessential portions of the regulation are being removed from the CFR.

The remaining seven codified parts of the DIAR will be dealt with in separate regulatory actions. While substantial portions of them will also be removed from the CFR, it is appropriate that other portions be rewritten and remain codified.

Required Determinations

The Department believes that public comment is unnecessary because the material being removed is outdated or deals exclusively with internal procedures. Therefore, in accordance with 5 U.S.C. 553(b)(B), the Department finds good cause to publish this document as a final rule. This rule was not subject to Office of Management and Budget review under Executive Order 12866. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Department has determined that this rule will not have a significant economic impact on a substantial number of small entities because no requirements are being added for small businesses and no protections are being withdrawn. The Department has determined that this rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969. The Department has certified that this rule meets the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 48 CFR Chapter 14

Government procurement, Reporting and recordkeeping requirements.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

PARTS 1404, 1405, 1406, 1407, 1409, 1410, 1413, 1414, 1419, 1420, 1424, 1432, 1433, 1436, 1437, 1442—[REMOVED]

Under the authority found at Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); and 5 U.S.C. 301, Chapter 14 of Title 48 of the Code of Federal Regulations is amended by removing Parts 1404, 1405, 1406, 1407, 1409, 1410, 1413, 1414, 1419, 1420, 1424, 1432, 1433, 1436, 1437 and 1442.

[FR Doc. 95–14283 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–RF–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 060595A]

Groundfish of the Bering Sea and Aleutian Islands Area; Greenland Turbot in the Bering Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Greenland turbot in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of Greenland turbot in these areas be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Greenland turbot total allowable catch (TAC) in the Bering Sea subarea has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 7, 1995, until 12 midnight A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the TAC for Greenland turbot in the Bering Sea subarea was established by the final 1995 harvest specifications of groundfish (60 FR 8478, February 14, 1995), as 4,669 metric tons, as amended (60 FR 27488, May 24, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the TAC for Greenland turbot in the Bering Sea subarea has been reached. Therefore, NMFS is requiring that further catches of Greenland turbot in the Bering Sea subarea be treated as prohibited species in accordance with § 675.20(c)(3), and is prohibiting their retention.

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

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

Dated: June 6, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–14334 Filed 6–7–95; 3:06 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 060595B]

Groundfish of the Bering Sea and Aleutian Islands Area; Atka Mackerel in the Western Aleutian District

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Atka mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of Atka mackerel in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Atka mackerel total allowable catch (TAC) in the Western Aleutian District has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 7, 1995, until 12 midnight A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the TAC for Atka mackerel in the Western Aleutian District was established by the final 1995 harvest specifications of groundfish (60 FR 8478, February 14, 1995), as 16,500 metric tons, as amended (60 FR 27488, May 24, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the TAC for Atka mackerel in the Western Aleutian District has been reached. Therefore, NMFS is requiring that further catches of Atka mackerel in the Western Aleutian District be treated as prohibited species in accordance with § 675.20(c)(3), and is prohibiting their retention.

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

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

Dated: June 6, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–14335 Filed 6–7–95; 3:06 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 112
Monday, June 12, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[FV95–959–1PR]

Onions Grown in South Texas; Changes in Bulk Bin Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove a requirement that polyethylene liners be used in bulk shipping bins. Such liners limit air flow inside the container and may cause the onions to decay more easily and result in a loss of product. Removal of this requirement should reduce product loss due to excessive decay and lessen the chances of receiver rejection. This proposed rule also would prohibit the use of bulk bins for shipments of onions for fresh whole use because the arrival condition of such onions is critical. Onions transported in bulk bins are not protected from damage, such as bruising, as well as those packed in smaller size cartons or bags. However, the arrival condition of onions for fresh chopping, slicing, or peeling, or other fresh use in which the form of the onion is changed is not as critical. The use of bulk bins, which are more cost effective for such shipments, would continue.

DATES: Comments must be received by July 12, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 690–0464; or Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501; telephone: (210) 682–2833, FAX (210) 682–5942.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR part 959), as amended, regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are approximately 35 handlers of South Texas onions who are subject to regulation under the order and approximately 70 producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of South Texas onions may be classified as small entities.

At a public meeting on November 8, 1994, the South Texas Onion Committee (committee) recommended deleting a requirement that perforated polyethylene liners (poly liners) be used in the bulk bins under the authority for experimental shipments. It also recommended limiting the use of bulk bins to shipments of onions for peeling, slicing, chopping, or other fresh use in which the form of the onion is changed. Fourteen members and alternates were present, and all recommendations were unanimous.

Sweet onions normally have a high moisture content, and a poly liner, even when perforated, acts as a vapor barrier. Moisture remains inside the bin, or container, which can cause mold, bacteria, and other decay micro-organisms to develop. To avoid such a warm, damp environment, air circulation is necessary. However, use of the poly liner blocks air movement and may cause ''sweating'' and decay of the onions. Because satisfactory arrival condition is important to onion receivers, the committee recommended that the requirement for poly liners be removed. This should lessen the chances of receiver rejections due to excessive decay.

At the meeting, the committee also recommended permitting onions for fresh peeling, chopping, or slicing to be shipped in bulk bins, as authorized by the provision for experimental shipments in the handling regulation. Although bags and cartons provide better protection during shipping, the committee does not believe that such additional protection is necessary for onions moving to processing outlets. Handlers have found that both bags and cartons are more difficult to load and unload than are bulk containers. In addition, bags and cartons are more expensive to buy and only last for one shipment, while bins can be used repeatedly. Also, bags and cartons must be disposed of at the destination, an additional cost, while bins can be returned for further use. It is therefore proposed that sub-paragraph (i) of paragraph (f)(3) *Experimental shipments.* be revised to remove the requirement for a poly liner and be limited to shipments for peeling, slicing, and chopping, and redesignated as (f)(3) *Peeling, slicing, and chopping.* The remaining parts of paragraph (3) *Experimental shipments.* would be redesignated (f)(4) *Experimental shipments.* but would be otherwise unchanged. Both paragraph (f)(3) and (f)(4) would continue to be subject to the safeguards under paragraph (g).

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this proposal have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581–0074.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is proposed to be amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

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

Authority: 7 U.S.C. 601–674.

2. Paragraphs (f)(4) and (f)(5) of § 959.322 are redesignated (f)(5) and (f)(6) respectively; paragraphs (f)(3)(ii) and (f)(3)(iii) are redesignated (f)(4)(i) and (f)(4)(ii) and revised; paragraph (f)(3)(i) is redesignated as (b)(3) and revised; and the introductory text of paragraphs (g) and (g)(4) are revised to read as follows:

§ 959.222 Handling regulation.

* * * * *

(f) * * *

(3) *Peeling, chopping, and slicing.* Upon approval of the committee, onions for peeling, chopping, and slicing may be shipped in bulk bins with inside dimensions of 47 inches x 37 1/2 inches x 36 inches deep and having a volume of 63,450 cubic inches, or containers deemed similar by the committee. Such shipments shall be exempt from paragraph (c) of this section, but shall be handled in accordance with the safeguard provisions of § 959.54 and shall meet the requirements of paragraphs (a), (b), (d), and (g) of this section.

(4) *Experimental shipments.* (i) Upon approval by the committee, onions may be shipped for experimental purposes exempt from regulations issued pursuant to §§ 959.42, 959.52, and 959.60, provided they are handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section.

(ii) Upon approval of the committee, onions may be shipped for testing in types and sizes of containers other than those specified in paragraphs (c) and (f)(2) of this section, provided that the handling of onions in such experimental containers shall be under the supervision of the committee.

* * * * *

(g) *Safeguards.* Each handler making shipments of onions for relief, charity, processing, experimental purposes, or peeling, chopping and slicing shall: * * *

(g)(4) In addition to provisions in the preceding paragraphs, each handler making shipments for processing and peeling, chopping, and slicing shall:

* * * * *

Dated: June 6, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–14277 Filed 6–9–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–95–110A]

RIN 1904–AA64

Alternative Fuel Transportation Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of limited reopening of the comment period.

SUMMARY: On February 28, 1995, the Department of Energy (DOE) published a notice of proposed rulemaking (60 FR 10970) to implement statutorily required alternative fueled vehicle acquisition requirements applicable to certain alternative fuel providers and State government fleets under sections 501 and 507(o) of the Energy Policy Act of 1992 (Act), respectively. Public hearings were held in three cities and the 60-day public comment period closed on May 1, 1995. The purpose of this notice is to reopen the comment period for 30 days in order to solicit comments on options being given consideration in light of the many comments for and against altering the dates of the statutory vehicle acquisition schedules.

DATES: Written comments (11 copies) on the issues presented in this notice must be received by the Department on or before July 12, 1995.

ADDRESSES: Written comments (11 copies) should be addressed to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–33, Docket No. EE–RM–95–110A, 1000 Independence Ave., SW, Washington, DC 20585, (202–586–3012).

Docket: Supporting information used in developing the proposed rule and written comments received on the Notice of Proposed Rulemaking are contained in Docket No. EE–RM–95–110A. This Docket is available for examination in DOE's Freedom of Information Reading Room, 1E–090, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–586–6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Katz, Program Manager, Office of Energy Efficiency and Renewable Energy (EE–33), U.S. Department of Energy, 1000

Independence Avenue, S.W., Washington, DC 20585, (202) 586–6116.

SUPPLEMENTARY INFORMATION: In the February 28, 1995, notice of proposed rulemaking, DOE described the statutory provisions of the Act that impose the alternative fueled vehicle acquisition schedules and provide for a starting date of September 1, 1995 (the beginning of model year 1996). Among other things, DOE pointed out that, with respect to the acquisition requirements applicable to alternative fuel providers in model years 1997 and thereafter, section 501(b) of the Act authorizes DOE to reduce the percentage to no less than 20 percent and to extend the deadlines for up to two years. 42 U.S.C. 13251(b). DOE indicated that it did not intend to exercise its discretion under section 501(b), but requested comment on the conditions that should be the basis for such action. DOE also pointed out that, with respect to the statutory vehicle acquisition schedule applicable to State government fleets, section 507(o) does not contain a provision similar to section 501(b), and therefore, does not explicitly authorize DOE to amend the percentages or deadlines in the statutory schedule. 60 FR 10970–1.

DOE received a significant amount of comment on the desirability of a delay of the vehicle acquisition schedules. Some of the comments argue that DOE should delay the acquisition schedules so as to provide the same amount of lead time as the Act contemplates between the statutory deadlines for promulgation of final regulations (January 1, 1994, for alternative fuel providers and April 24, 1994, for State fleets) and the date the vehicle acquisition requirements take effect (September 1, 1995). Others argue for a one or two-year delay of the vehicle acquisition requirements for both alternative fuel providers and State fleets. A one-year delay would shift the starting point for both vehicle acquisition schedules to the beginning of model year 1997 on September 1, 1996. A two-year delay would shift the starting point for both vehicle acquisition schedules to the beginning of model year 1998 on September 1, 1997. In making a case for delay, some comments have argued that a hiatus between the date of promulgation and the date the vehicle acquisition requirements become effective is needed so that those who are subject to the regulations can take necessary actions to comply and suppliers of alternative fuel and alternative fueled vehicles can adjust to the requirements. Moreover, some State officials have argued that a delay is necessary because section 507(o)(2)(A) of the Act provides for a 12-month period after promulgation of final regulations during which the State can submit an Alternative State Plan.

Other commenters argue against any modification of the statutory schedule, claiming that such a delay would be detrimental to those who planned and acted in light of the September 1, 1995, beginning date. They argue that the exemption process is adequate to provide relief to those who cannot comply for good cause.

DOE recognizes that it is appropriate to provide for lead time between the date the final regulations are promulgated and the date the vehicle acquisition requirements are enforced. Lead time could be provided by amending the statutory vehicle acquisition schedule, staying enforcement, or some combination of amending the schedule and staying enforcement. However, DOE must act within the constraints on its delegated authority under the Act to modify the statutory vehicle acquisition schedules. In this connection, DOE invites comment on the legal implications of: (1) The omission from section 501(b) of explicit authority to modify the model year 1996 percentage applicable to alternative fuel providers; and (2) the lack of any explicit authority in section 507(o) to change the scheduled percentages applicable to State government fleets for model year 1996 or any model year thereafter. The Act does not provide any restrictions on DOE's enforcement discretion.

DOE also seeks comment on options for staying enforcement of the vehicle acquisition requirements in order to provide lead time. Relying on its broad enforcement discretion, DOE could modify proposed § 490.605 to provide for a stay of enforcement for both alternative fuel providers and State government fleets. Proposed §§ 490.201 (the requirements for State government fleets) and 490.302 (the requirements for alternative fuel providers) would be modified to be ''subject to § 490.605.''

DOE seeks comment on several options being considered for redrafting proposed § 490.605. One option would provide in substance that DOE: (1) Shall not enforce during the lead time period; and (2) thereafter shall enforce as if the statutory vehicle acquisition schedules had been amended to begin after the end of the lead time period. For example, if DOE chose to provide for one model year of lead time, this approach would provide for no enforcement in model year 1996 and enforcement of the model year 1996 requirements in model year 1997, and so on. Another option would only provide that DOE shall not enforce during the lead time period, but would not affect the enforcement requirements for later model years. The difference between these options is that under the latter option, after expiration of the lead time period, enforcement would begin at the applicable percentage set forth in the statutory vehicle acquisition schedule rather than at the percentage applicable for model year 1996.

The options being considered for the duration of the lead time period include one model year, two model years, or the lead time specifically provided by section 501 and 507(o) (20 months and 16 months, respectively). However, DOE is open to other suggestions.

A stay of enforcement would not preclude modifying the alternative fuel providers' vehicle acquisition schedule for model year 1997 and thereafter consistent with section 501(b) of the Act. Neither would it preclude processing of exemption requests under the criteria set forth in sections 501(a)(5) and 507(i) of the Act.

Options involving a stay of enforcement would have the virtue of leaving intact the statutory provision to acquire alternative fueled vehicles in model year 1996 and future years. Those who may have acted in reliance on the dates in the statutory schedule, such as the major domestic automobile manufacturers, could benefit from the stimulus to purchase that the program would still provide. In this connection, it is worth noting that Ford and Chrysler have indicated their plans to accept orders for alternative fuel vehicles during the second half of model year 1995 with delivery starting during the first half of model year 1996. They, as well as the General Motors Corporation, have also indicated that they have model year 1997 plans to broaden their product offerings.

DOE urges interested members of the public to comment on the important issue discussed in this notice.

Issued in Washington, DC on June 2, 1995.

Brian T. Castelli,

Chief-of-Staff, Energy Efficiency and Renewable Energy.

[FR Doc. 95–14236 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–242–AD]

Airworthiness Directives; Jetstream Model ATP 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 Jetstream Model ATP airplanes. This proposal would require an inspection to ensure that various components of the retraction actuator of the nose landing gear (NLG) are secure, and an inspection of the bearing cap mounting holes for correct hole and thread length. The proposed AD would also require a later inspection for certain discrepancies of the retraction actuator; installation of revised tolerance bushings; and correction of any discrepancy found. This proposal is prompted by reports of failure of the attachment bolts of the bearing cap of the retraction actuator of the NLG. The actions specified by the proposed AD are intended to prevent the inability to raise or lower the NLG, or possible collapse of the NLG, due to failure of the attachment bolts of the bearing cap.

DATES: Comments must be received by July 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–242–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

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 94–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. 94–NM–242–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model ATP airplanes. The CAA advises that there have been reports indicating that the attachment bolts of the bearing cap of the retraction actuator of the nose landing gear (NLG) have failed. This has been determined to be the result of mismatches between the bearing cap and bush, or inadequate counterboring of the bearing cap. This condition, if not corrected, could result in the inability to raise or lower the NLG, or possible collapse of the NLG.

Jetstream has issued Service Bulletin ATP–53–30–10372A, dated November 3, 1994, which describes procedures for an inspection to ensure that the bearing caps, bolts, and special washers are secure. The service bulletin also describes procedures for inspecting the bearing cap mounting holes for correct hole and thread length. Additionally, the service bulletin describes a later inspection for discrepancies of the retraction actuator; installation of revised tolerance bushings; and alignment of the outboard support bracket, if necessary. The service bulletin also describes corrective actions for any discrepancy that is found during the inspections. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since 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, first, an inspection to ensure that the bearing caps, bolts, and special washers are secure; and inspection of the bearing cap mounting holes for correct hole and thread length. The proposed AD also would require a later inspection for discrepancies of the retraction actuator; installation of revised tolerance bushings; and alignment of the outboard support bracket, if necessary. This proposed AD would require corrective actions for any discrepancy found. The actions would be required to be accomplished in accordance with the Jetstream Service Bulletin ATP–76–16, dated October 14, 1994, described previously.

Unlike the procedures recommended in that Jetstream service bulletin, however, this proposed rule would not permit further flight after detection of any cable that is found with one wire broken in any strand. Instead, this proposed rule would require, prior to further flight, repair of the cable in accordance with the service bulletin. The FAA finds that an adequate level of safety for the affected fleet requires that damaged cables must be replaced prior to further flight. The FAA has

determined that, in cases where certain known unsafe conditions exist, and where actions to detect and correct that unsafe condition can be readily accomplished, those actions must be required.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 17 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,200, or $1,020 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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 ''significant regulatory action'' under Executive Order 12866; (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 part 39 of the Federal Aviation Regulations (14 CFR part 39) 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:

Jetstream Aircraft Limited (Formerly, British Aerospace Commercial Aircraft Limited): Docket 94–NM–242–AD.

Applicability: Model ATP airplanes, constructor's numbers 2002 through 2056 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to raise or lower the nose landing gear (NLG), or a possible collapse of the NLG, accomplish the following:

(a) Within 300 hours time-in-service or 90 days after the effective date of this AD, whichever occurs first: Perform an inspection to ensure that the components of the bracket attachment assembly of the retraction actuator of the NLG are secure, and to ensure that the inboard and outboard support brackets of the mounting holes of the bearing cap have correct hole and thread lengths, in accordance with paragraph 2.A. of the Accomplishment Instructions of Jetstream Service Bulletin ATP–53–30–10372A, dated November 3, 1994. If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the service bulletin.

(b) Within 3,000 landings, or 12 months after the effective date of this AD, whichever occurs first: Install revised tolerance bushings in the bearing cap/bracket attachment assemblies of the NLG retraction actuator, test the actuator for freedom of movement, and inspect for any discrepancy of the actuator, in accordance with paragraph 2.B. of the Accomplishment Instructions of Jetstream Service Bulletin ATP–53–30–10372A, dated November 3, 1994.

(1) If no discrepancy is found no further action is required by this AD.

(2) If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the service bulletin.

(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 2: 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 sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 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 June 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14319 Filed 6–9–95; 8:45 am]

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14 CFR Part 39

[Docket No. 94–NM–173–AD]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Jetstream Model ATP airplanes, that currently requires daily and/or pre-

flight cleaning and inspections to detect damaged main landing gear (MLG) wheel bearings and replacement of discrepant parts. That AD was prompted by reports of failure of the MLG wheel bearings. The actions specified by that AD are intended to prevent failure of the MLG wheel bearing, which could result in detachment of a MLG wheel from the airplane. This action would require an additional inspection, in lieu of the pre-flight inspection, for certain airplanes. This action would also require the accomplishment of a terminating modification that would eliminate the need for daily and pre-flight inspections.

DATES: Comments must be received by July 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

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 94–NM–173–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. 94–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 18, 1994, the FAA issued AD 94–05–03, amendment 39–8841 (59 FR 9400, February 28, 1994), applicable to certain Jetstream Model ATP airplanes, to require daily and/or pre-flight cleaning and detailed visual inspections to detect damage or discoloration of the main wheel hub caps and of the outer side of each inflation valve side hubs on the main landing gear (MLG) wheels. That amendment also requires replacement of the damaged or discolored MLG wheel assembly and bearings with a serviceable wheel assembly and bearings. That action was prompted by reports of failure of the MLG wheel bearings. The requirements of that AD are intended to prevent detachment of a MLG wheel from the airplane.

Since the issuance of that AD, Jetstream has issued Revision 3 of Service Bulletin ATP–32–48, dated July 15, 1994. The daily cleaning and detailed visual inspection, and pre-flight detailed visual inspection procedures described in this revision are essentially identical to those described in Revision 1 of the service bulletin (which was referenced in AD 94–05–03 as the appropriate source of service information). For certain airplanes Revision 3 of the service bulletin describes procedures for performing an additional intermediate detailed visual inspection, in lieu of the pre-flight inspection. This intermediate inspection would detect damage (including blistering or flaking of the paint) or heat discoloration of the wheel hub cap and the outer side of each inflation valve side hub on the MLG wheels.

Jetstream has also issued Service Bulletin ATP–32–51–35296A, dated May 12, 1994, which describes procedures for modification of the MLG. This modification involves drilling two additional locking holes in each axle. This modification will reduce the axial movement between the locking positions to provide a closer control of the wheel bearing preload.

Additionally, Jetstream issued Service Bulletin ATP–32–53–35294A (including Erratum No. 1), dated July 18, 1994, and Revision 2, dated January 13, 1995, which describe procedures for modification of certain wheels on the MLG. This modification involves removing the existing valve side half hub assembly of the wheel and installing a new valve side half hub assembly, which is capable of accepting a new outer bearing with higher load capability.

Accomplishment of these modifications described in Service Bulletins ATP–32–51–35296A and ATP–32–53–35294A would eliminate the need for the daily, pre-flight, and daily intermediate inspections, and would positively address the unsafe condition identified as detachment of a MLG wheel from the airplane.

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has classified these service bulletins as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since 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 supersede AD 94–05–03 to continue to require daily cleaning and daily/pre-flight detailed visual inspections to detect damage (including blistering or flaking of the paint) or discoloration of the wheel hub caps and of the outer side of the inflation valve side hubs on the MLG wheels. The proposed AD would

also require an additional daily intermediate detailed visual inspection, in lieu of the pre-flight inspection, for certain airplanes. This intermediate inspection would detect damage or heat discoloration of the wheel hub cap and the outer side of each inflation valve side hub on the MLG wheel. Additionally, the proposed AD would require modification of the MLG, which would constitute terminating action for the daily, pre-flight, daily intermediate inspection requirements. The actions would be required to be accomplished in accordance with the service bulletins described previously. If any damage or discoloration is found, the replacement of the existing MLG wheel assembly and bearings with a serviceable wheel assembly and bearings would be required to be accomplished in accordance with a method approved by the FAA.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that were previously required by AD 94–05–03, and would be retained in this proposed AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the inspection requirement of this AD on U.S. operators is estimated to be $1,200, or $120 per airplane, per inspection cycle.

The inspections that would be added by this proposed AD would take approximately 2 work hours per airplane to accomplish , at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $1,200, or $120 per airplane, per inspection cycle.

It would take approximately 11 work hours per airplane to accomplish the proposed modifications at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the modification proposed by this AD on U.S. operators is estimated to be $6,600, or $660 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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 ''significant regulatory action'' under Executive Order 12866; (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 part 39 of the Federal Aviation Regulations (14 CFR part 39) 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 39–8841 (59 FR 9400, February 28, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited): Docket 94–NM–173–AD. Supersedes AD 94–05–03, Amendment 39–8841.

Applicability: Model ATP airplanes, constructor numbers 2001 through 2063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent detachment of a main landing gear (MLG) wheel from the airplane, accomplish the following:

(a) For airplanes on which Jetstream Modification 35296A (reference Jetstream Service Bulletin ATP–32–51–35296A) has not been installed: Accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 24 hours after March 15, 1994 (the effective date of AD 94–05–03, amendment 39–8841), perform a cleaning and a detailed visual inspection to detect damage (including blistering or flaking of the paint) or discoloration of the wheel hub caps and of the outer side of the inflation valve side hubs on the MLG wheels, in accordance with paragraph 2.(2) of the Accomplishment Instructions of Jetstream Service Bulletin ATP–32–48, Revision 1, dated January 28, 1994; or in accordance with paragraph 2.A.(2) of the Accomplishment Instructions of Jetstream Service Bulletin ATP–32–48, Revision 3, dated July 15, 1994. Thereafter, prior to the first flight of each day, repeat this cleaning and inspection. The cleaning and inspection must be performed by appropriately certificated maintenance personnel as specified in section 43.3 of the Federal Aviation Regulations (14 CFR 43.3). If any damage or discoloration is found during any inspection required by this paragraph, prior to further flight, replace the existing MLG wheel assembly and bearings with a serviceable wheel assembly and bearings, in accordance with the airplane maintenance manual.

(2) Following accomplishment of the initial inspection required by paragraph (a)(1) of this AD, prior to each flight, with the exception of the first flight of each day, perform a pre-flight detailed visual inspection to detect damage (including blistering or flaking of the paint) or heat discoloration of the wheel hub cap and the outer side of each inflation valve side hub on the MLG wheels, in accordance with paragraph 2.A.(3) of the Accomplishment Instructions of Jetstream Service Bulletin ATP–32–48, Revision 1, dated January 28, 1994; or in accordance with paragraph 2.A.(3) of the Accomplishment Instruction of Jetstream Service Bulletin ATP–32–48, Revision 3, dated July 15, 1994. The pre-flight inspections must be performed by appropriately certificated maintenance personnel, as specified in section 43.3. If any damage or discoloration is found during any inspection required by this paragraph, prior to further flight, replace the existing MLG wheel assembly and bearings with a

serviceable wheel assembly and bearings, in accordance with the airplane maintenance manual.

(b) For airplanes on which Jetstream Modification 35296A (reference Jetstream Service Bulletin ATP–32–51–35296A) has been installed: Accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Within 24 hours after the last inspection performed in accordance with paragraph (a)(1) of this AD, perform a cleaning and a detailed visual inspection to detect damage (including blistering or flaking of the paint) or discoloration of the wheel hub caps and of the outer side of the inflation valve side hubs on the MLG wheels, in accordance with paragraph 2.Part B.(2) of the Accomplishment Instructions of Jetstream Service Bulletin ATP–32–48, Revision 3, dated July 15, 1994. Thereafter, prior to the first flight of each day, repeat this cleaning and inspection. The cleaning and inspection must be performed by appropriately certificated maintenance personnel as specified in section 43.3 of the Federal Aviation Regulations (14 CFR 43.3). If any damage or discoloration is found during any inspection required by this paragraph, prior to further flight, replace the existing MLG wheel assembly and bearings with a serviceable wheel assembly and bearings, in accordance with the airplane maintenance manual.

(2) Following accomplishment of the initial inspection required by paragraph (b)(1) of this AD, once a day, perform an additional intermediate detailed visual inspection to detect damage (including blistering or flaking of the paint) or heat discoloration of the wheel hub cap and the outer side of each inflation valve side hub on the MLG wheels, in accordance with paragraph 2.Part B.(3) of the Accomplishment Instructions of Jetstream Service Bulletin ATP–32–48, Revision 3, dated July 15, 1994. The once-a-day inspections must be performed by appropriately certificated maintenance personnel, as specified in 14 CFR 43.3. If any damage or discoloration is found during any inspection required by this paragraph, prior to further flight, replace the existing MLG wheel assembly and bearings with a serviceable wheel assembly and bearings, in accordance with the airplane maintenance manual.

(c) Within 10 months after the effective date of this AD, modify the MLG, in accordance with Jetstream Service Bulletin ATP–32–51–35296A (including Erratum No. 1), dated May 12, 1994; and Jetstream Service Bulletin ATP–32–53–35294A, dated July 18, 1994, or Revision 2, dated January 13, 1995. Accomplishment of these modifications constitutes terminating action for the daily and pre-flight inspection requirements of this AD.

(d) 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 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 June 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14316 Filed 6–9–95; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL–5217–4]

RIN 2060–AD–56

National Emission Standards for Hazardous Air Pollutants for Butyl Rubber Production, Epichlorohydrin Elastomers Production, Ethylene-Propylene Elastomers Production, Hypalon™ Production, Neoprene Production, Nitrile Butadiene Rubber Production, Polybutadiene Rubber Production, Polysulfide Rubber Production, and Styrene-Butadiene Rubber and Latex Production (Group 1 Polymers and Resins)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed rule would reduce emissions of hazardous air pollutants (HAP) from existing and new facilities that manufacture one or more of the following elastomers: Butyl rubber (BR), epichlorohydrin elastomers (EPI), ethylene-propylene elastomers (EPR), hypalon® (HYP), neoprene (NEO), nitrile butadiene rubber (NBR), polybutadiene rubber (PBR), polysulfide rubber (PSR), and styrene-butadiene rubber and latex (SBR). The EPA is in the process of developing standards for a wide range of types of polymers and resin production facilities. The materials covered by this proposed rule are elastomers used to make a variety of synthetic rubber products including tires, hoses, belts, footwear, adhesives, caulks, wire insulation, seals, floor tiles, and latexes. In the production of elastomers, a variety of HAP are used as monomers or process solvents. The HAP emitted by the facilities covered by this proposed rule include n-hexane, styrene, 1,3-butadiene, acrylonitrile, methyl chloride, hydrogen chloride, carbon tetrachloride, chloroprene, and toluene. Some of these pollutants are considered to be probable human carcinogens when inhaled and all can cause toxic effects following exposure. The proposed rule is estimated to reduce emissions of these pollutants by over 6,500 Mg/yr. The emission reductions achieved by these standards, when combined with the emission reductions achieved by other similar standards, will achieve the primary goal of the Clean Air Act, which is to ''enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.''

The proposed rule implements section 112(d) of the Clean Air Act Amendments of 1990 (1990 Amendments), which requires the Administrator to regulate emissions of HAP listed in section 112(b) of the 1990 Amendments. The intent of this rule is to protect the public by requiring the maximum degree of reduction in emissions of HAP from new and existing major sources, taking into consideration the cost of achieving such emission reduction, and any nonair quality, health and environmental impacts, and energy requirements.

DATES: *Comments.* Comments must be received on or before August 11, 1995.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by July 3, 1995, a public hearing will be held on July 12, 1995 beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Marguerite Thweatt at (919) 541–5607 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the EPA by June 27, 1995 by contacting Ms. Marguerite Thweatt, Organic Chemicals Group, (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5607.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE–131), Attention: Docket No. A–92–44, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below. The public hearing, if required, will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

The docket is located at the above address in room M–1500, Waterside Mall (ground floor), and may be

inspected from 8 a.m. to 4 p.m., Monday through Friday; telephone number (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed rule, contact Mr. Leslie Evans at (919) 541–5410, Organic Chemicals Group, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The proposed regulatory text and the rationale for selection of the different components of the standard are not included in this **Federal Register** notice. The regulatory text is available in Docket No. A–92–44, or from the EPA contact person designated in this notice. The proposed regulatory language is also available on the Technology Transfer Network (TTN) on the EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

In addition to the proposed regulatory text, the Basis and Purpose Document, which contains the rationale for the various components of the standard, is available in the docket and on the TTN. This document is entitled Hazardous Air Pollutant emissions from Process Units in the Elastomer Manufacturing Industry—Basis and Purpose Document for Proposed Standards, May 1995, and has been assigned document number EPA–453–R–95–006a.

Other materials related to this rulemaking are available for review in the docket. Some of these memoranda have been compiled into a single document, the Supplementary Information Document (SID), to allow interested parties more convenient access to the information. The SID is available in the docket (Docket No. A–92–44, Category II–A), and from the EPA Library by calling (919) 541–2777. The document is entitled Hazardous Air Pollutant Emissions from Process Units in the Elastomer Manufacturing Industry—Supplementary Information Document for Proposed Standards, May 1995, and has been assigned document number EPA–453/R–95–005a.

In some cases, technical analyses conducted during the development of the Hazardous Organic NESHAP, or HON, were indirectly relied upon in the development of today's proposed rule. The HON was promulgated on April 22, 1994 (59 FR 19402), and supporting information for the HON is available in the Air Dockets A–90–19 through A–90–23.

The information presented in this preamble is organized as follows:

I. List of Source Categories
II. A Summary of Considerations Made in Developing This Rule
III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process
A. Source of Authority for NESHAP Development
B. Criteria for Development of NESHAP
IV. Summary of Proposed Rule
A. Source Categories to be Regulated
B. Relationship to Other Rules
C. Pollutants to be Regulated
D. Affected Emission Points
E. Format of the Standards
F. Proposed Standards
G. Recordkeeping and Reporting Requirements
V. Discussion of Major Issues
VI. Summary of Environmental, Energy, Cost, and Economic Impacts
A. Facilities Affected by these NESHAP
B. Primary Air Impacts
C. Other Environmental Impacts
D. Energy Impacts
E. Cost Impacts
F. Economic Impacts
VII. Administrative Requirements
A. Public Hearing
B. Docket
C. Executive Order 12866
D. Enhancing the Intergovernmental Partnership Under Executive Order 12875
E. Paperwork Reduction Act
F. Regulatory Flexibility Act
G. Miscellaneous

I. List of Source Categories

Section 112 of the 1990 Amendments requires that the EPA evaluate and control emissions of HAP. The control of HAP is achieved through promulgation of emission standards under sections 112(d) and 112(f) and work practice and equipment standards under section 112(h) for categories of sources that emit HAP. On July 16, 1992, the EPA published an initial list of major and area source categories to be regulated, as required under section 112(c) of the 1990 amendments. Included on that list were major sources emitting HAP from the production of BR, EPI, EPR, HYP, NEO, NBR, PBR, PSR, and SBR. These source categories are combined under today's proposed rule because of similarities in process operations, emission characteristics, and control device applicability and costs. For the purpose of this notice, these nine source categories are collectively referred to as elastomer source categories.

The EPA identified a total of 35 plant sites producing one or more of the elastomers listed. At eight plant sites, elastomers from two or more subcategories are produced. For example, at one plant site there is one process producing EPR and another process producing PBR.

All of the facilities considered in the analysis supporting today's proposed rule are believed to be major sources according to the 1990 Amendments criterion of having the potential to emit 10 tons per year of any one HAP or 25 tons per year of combined HAP. The proposed rule would apply to all major sources that produce any of the nine types of elastomers identified in this notice. Area sources would not be subject to this proposed rule.

In developing the background information to support the proposed rule, the EPA chose to subcategorize three of the nine source categories for purposes of analyzing the maximum achievable control technology (MACT) floors and regulatory alternatives. A fourth subcategory was created by combining two processes that had virtually identical facilities, processes, and HAP emissions. Subcategorization was necessary to reflect major variations in production methods, raw material usage and/or HAP emissions that potentially affect the applicability of controls. Although the resulting level of the standard was identical for many subcategories, note that all technical analyses were conducted on a subcategory basis to determine the appropriate level of the standard. Table 1 summarizes the subcategories developed.

II. A Summary of Considerations Made in Developing This Rule

The Clean Air Act was created, in part, ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population'' [the ACT, § 101(b)(1)]. As such, this proposed regulation would protect the public health by reducing emissions of HAP from elastomer production.

TABLE. 1.—SUBCATEGORIZATION OF GROUP I POLYMERS

Source category	Subcategory	Number of sources in subcategory
Butyl Rubber	Butyl Rubber (BR)	1
	Halobutyl Rubber (HBR)	1
Epichlorohydrin Rubber (EPI)	None	1
Ethylene Propylene Rubber (EPR)	None	5
Hypalon® (HYP)	None	1
Neoprene (NEO)	None	3
Nitrile Butadiene Rubber	Nitrile Butadiene Rubber by Emulsion (NBR)	4
	Nitrile Butadiene Latex (NBL)	3
Polysulfide Rubber (PSR)	None	1
Polybutadiene Rubber	Polybutadiene Rubber and Styrene Butadiene Rubber by Solution (PBR/SBRS).	5
Styrene Butadiene Rubber	Styrene Butadiene Rubber by Emulsion (SBRE)	4
	Styrene Butadiene Latex (SBL)	15

Pollutants emitted by Polymer and Resin I sources that are listed in Section 112(b)(1) include n-hexane, styrene, 1,3-butadiene, acrylonitrile, methyl chloride, carbon tetrachloride, chloroprene, and toluene. Some of these pollutants are considered to be probable human carcinogens when inhaled, and all can cause reversible and irreversible toxic effects following exposure. These effects include respiratory and skin irritation, effects upon the eye, various systemic effects including effects upon the liver, kidney, heart and circulatory systems, neurotoxic effects, and in extreme cases, death.

These effects vary in severity based on the level and length of exposure and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Health impacts are also dependent on multiple factors that affect human variability such as genetics, age, health status (e.g., presence of pre-existing disease) and lifestyle. The EPA does not have sufficient detailed data to conduct an intensive analysis to determine the actual population exposures to the HAP and resulting health effects around these facilities. This rule is technology-based; i.e., based on maximum achievable control technology. In addition, it is not a ''significant'' rule as defined by Executive Order 12866, and a benefits analysis is not required. Considering these factors, the EPA chose not to expend the resources required to collect additional data and conduct an intensive health impacts analysis. Therefore, the EPA does not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the proposed standard will substantially reduce emissions and exposures to the level achievable with MACT.

Due to the volatility and relatively low potential for bioaccumulation of these pollutants, air emissions are not expected to deposit on land or water and cause subsequent adverse health or ecosystem effects.

The alternatives considered in the development of this regulation, including those alternatives selected as standards for new and existing elastomer sources, are based on process and emissions data received from every existing elastomer facility known to be in operation at the time of the initial data collection. The EPA met with industry several times to discuss this data. In addition, facilities and State regulatory authorities had the opportunity to comment on draft versions of the regulation and to provide additional information. Several facilities did provide comments; these comments were considered, and in some cases, today's proposed standards reflect these comments. Of major concern to industry were the reporting and recordkeeping burden and the requirements for wastewater control.

The proposed standards give existing facilities 3 years from the date of promulgation to comply. This is the maximum amount of time allowed under the Clean Air Act. New sources are required to comply with the standard upon start-up. The EPA sees no reason why new facilities would not be able to comply with the requirements of the standards upon startup. The number of existing sources affected by this rule is less than 50; therefore, the EPA does not believe that required retrofits or other actions cannot be achieved in the time frame allotted.

Included in the proposed rule are methods for determining initial compliance as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule. The Agency has also attempted to maintain consistency with existing regulations by either incorporating text from existing regulations or referencing the application sections, depending on which method would be least confusing for a given situation.

As described in the Basis and Purpose document, regulatory alternatives were considered that included a combination of requirements equal to, and above, the MACT floor. Cost-effectiveness was a factor considered in evaluating options above the floor; in cases where options more stringent than the floor were selected, they were judged to have a reasonable cost effectiveness. For EPR, PBR/SBR (by solution), and SBR (by emulsion) the estimated cost effectiveness was found to be relatively high at the MACT floor level due to the requirements for process back-end operations. However, the back-end provisions of the regulation contain several options for compliance that will allow facilities to select the most cost-effective option based on facility-specific considerations.

Representatives from other interested EPA offices and programs, as well as representatives from State regulatory agencies, are included in the regulatory development process as members of the Work Group. The Work Group is involved in the regulatory development process, and must review and concur with the regulation before proposal and promulgation. Therefore, the EPA believes that the implications to other EPA offices and programs have been

adequately considered during the development of these standards.

III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process

A. Source of Authority for NESHAP Development

Section 112 of the 1990 Amendments gives the EPA the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed. The EPA must list all known source categories and subcategories of ''major sources'' (defined below) that emit one or more of the listed HAP. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAP. This list of source categories was published in the **Federal Register** on July 16, 1992 (57 FR 31576) and includes BR, EPI, EPR, HYP, NEO, NBR, PBR, PSR, and SBR.

Sources with a potential to emit at or greater than major source levels shall abide by the provisions of this rule unless they accept and comply with federally enforceable limitations on that potential which reduce their potential to emit to less than major source levels. The most common mechanisms for ensuring that these limitations are federally enforceable are Title V, State Implementation Plan (SIP), Prevention of Significant Deterioration (PSD), or New Source Review (NSR) permits. The Agency is currently reviewing what other mechanisms may be available.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112(d) of the 1990 Amendments. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as MACT. When the selection of MACT considers control levels more stringent than the MACT floor (described below), its selection must reflect consideration of the cost of achieving the emission reduction, any non-air quality, health, and environmental impacts, and energy requirements.

The MACT floor is the least stringent level allowed for MACT standards. For new sources, the standards for a source category or subcategory ''shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator'' (section 112(d)(3)). Existing source standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3)). These two minimum levels of control define the MACT floor for new and existing sources.

IV. Summary of Proposed Standards

A. Source Categories To Be Regulated

Today's proposed standards would regulate HAP emissions from facilities in one of the 12 elastomer subcategories presented in Table 1, provided that a facility is a major source or is located at a plant site that is a major source. For the proposed rule, an affected source is defined as one of the following:

- All HAP emission points at a facility producing butyl rubber that are associated with butyl rubber production,
- All HAP emission points at a facility producing epichlorohydrin elastomer that are associated with epichlorohydrin elastomer production,
- All HAP emission points at a facility producing ethylene propylene rubber that are associated with ethylene propylene rubber production,
- All HAP emission points at a facility producing halobutyl rubber that are associated with halobutyl rubber production,
- All HAP emission points at a facility producing Hypalon™ that are associated with Hypalon™ production,
- All HAP emission points at a facility producing neoprene that are associated with neoprene production,
- All HAP emission points at a facility producing nitrile butadiene latex that are associated with nitrile butadiene latex production,
- All HAP emission points at a facility producing nitrile butadiene rubber that are associated with nitrile butadiene rubber production,
- All HAP emission points at a facility producing polybutadiene rubber and/or styrene butadiene rubber using a solution process that are associated with production of polybutadiene rubber and/or styrene butadiene rubber using a solution process,
- All HAP emission points at a facility producing polysulfide rubber that are associated with polysulfide production,
- All HAP emission points at a facility producing styrene butadiene latex that are associated with styrene butadiene latex production, and
- All HAP emission points at a facility producing styrene butadiene rubber using an emulsion process that are associated with styrene butadiene rubber production using an emulsion process.

In addition, if a facility produces elastomer products from more than one subcategory in the same equipment, then that facility is a single affected source.

The EPA is aware of some polymeric resin and copolymer products that are manufactured using similar chemicals and processes that are in some ways similar to the processes used in the manufacture of the elastomers covered by today's proposed rule. Several styrene butadiene, non-elastomer, resins and copolymers are included in this group. The EPA does not intend for today's proposed regulation to cover the production of these materials, which are often high conversion, block copolymers, with different end uses from the elastomers. However, the development of specific criteria to distinguish between elastomers and resins/copolymers has proven to be difficult. Therefore, the EPA is requesting comments on methods to clearly make this distinction.

B. Relationship to Other Rules

Sources subject to the proposed rule are also subject to other existing rules. In some cases, the proposed rule supersedes existing rules and affected sources are no longer required to comply with the existing rule. In other cases, there is no conflict between the existing rule and the proposed rule, and in these cases, the affected source must comply with both rules.

Sources subject to the proposed rule and subject to the NESHAP for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart I) are required to continue to comply with subpart I until the compliance date of the proposed rule. After the compliance date of the proposed rule, compliance with the proposed rule will constitute compliance with subpart I.

Sources subject to the proposed rule may have storage vessels subject to the NSPS for Volatile Organic Liquid Storage Vessels (40 CFR part 60, subpart Kb). After the compliance date for the proposed rule, such storage vessels are only subject to the proposed rule and are no longer required to comply with subpart Kb.

Sources subject to the proposed rule may have cooling towers subject to the

NESHAP for Industrial Cooling Towers (40 CFR part 63, subpart Q). There is no conflict between the requirements of subpart Q and the proposed rule. Therefore, sources subject to both rules must comply with both rules.

C. Pollutants To Be Regulated

The source categories covered by the proposed rule emit a variety of HAP. The most significant emissions are of the following HAP: n-hexane, styrene, 1,3-butadiene, acrylonitrile, methyl chloride, hydrogen chloride, carbon tetrachloride, chloroprene, and toluene. Today's proposed standards would regulate emissions of these compounds, as well as all other HAP that are emitted.

D. Affected Emission Points

Emissions from the following types of emission points (i.e., emission source types) are being covered by the proposed rule: Storage vessels, ''front-end'' process vents, process ''back-end'' operations, equipment leaks, and wastewater operations. The process ''front-end'' includes pre-polymerization, reaction, stripping, and material recovery operations; and the process ''back-end'' includes all operations after stripping (predominately drying and finishing).

E. Format of the Standards

As discussed in more detail in Section IV.F, Proposed Standards, the Hazardous Organic NESHAP (HON) (subparts F, G, and H of 40 CFR part 63) and the Batch Processes Alternative Control Techniques (ACT) document (EPA 453/R–93–017, November 1993) provided a basis for selection of the proposed formats. In most instances, the format of today's proposed standards is the same as those found in the HON and Batch Processes ACT. The following paragraphs summarize the selected formats, including those that are different from the HON and Batch Processes ACT. The formats and their selection are discussed in more detail in the Basis and Purpose Document for this proposed regulation.

For storage vessels, the format of today's proposed standards is dependent on the method selected to comply with the standards. If tank improvements (e.g., internal or external floating roofs with proper seals and fittings) are selected, the format is a combination of design, equipment, work practice, and operational standards. If a closed vent system and control device are selected, the format is a combination of design and equipment standards.

For front-end process vents, the format of today's proposed standards is also dependent on the method selected to comply with the standards. If a flare is selected, the format is a combination of equipment and operating specifications. If a control device other than a flare is used, the formats are a percent reduction and an outlet concentration.

For back-end process emissions, today's proposed standards are limits on the amount of residual HAP in the raw polymer product being fed to the back-end operation, in units of weight of HAP per weight of crumb rubber dry weight or latex. The format of today's proposed standards are dependent on the method selected to comply with the standards. If sampling is the method selected, the format is a weekly weighted average HAP content of all polymer processed in the stripping operations. The EPA is proposing test methods to determine residual HAP elsewhere in today's **Federal Register**. If add-on control is selected, the format is the reduction of HAP emissions to a level that would be equivalent to the emission reduction that would be achieved using stripping.

For equipment leaks, today's proposed standards incorporate several formats: Equipment, design, base performance levels (e.g., maximum allowable percent leaking valves), work practices, and operational practices. Different formats are necessary for different types of equipment, because of the nature of the equipment, available control techniques, and applicability of the measurement method. In addition, a work practice standard is adopted for equipment leaks resulting in the emission of HAP from cooling towers at all facilities producing a listed elastomer. This standard requires a leak detection and repair program to detect and repair leaks of HAP into cooling tower water.

For wastewater streams requiring control, today's proposed standards incorporate several formats: Equipment, operational, work practice, and emission standards. The particular format selected depends on which portion of the wastewater stream is involved. For transport and handling equipment, the selected format is a combination of equipment standards and work practices. For the reduction of HAP from the wastewater stream itself, several alternative formats are included, including five alternative numerical emission limit formats (overall percent reduction for total volatile organic HAP (VOHAP), individual HAP percent reduction, effluent concentration limit for total VOHAP, individual VOHAP effluent concentration limits, and mass removal for HAP) and equipment design and operation standard for a steam stripper. For vapor recovery and destruction devices other than flares, the format is a weight percent reduction. For flares, the format is a combination of equipment and operating specifications.

F. Proposed Standards

The standards being proposed for storage vessels, continuous front-end process vents, equipment leaks, and wastewater are the same as those promulgated for the corresponding emission source types at facilities subject to the HON. Also included are standards for two emission source types not covered by the HON, batch front-end process vents and process back-end operations. The batch front-end process vent applicability and control requirements are based on the approach described in the Batch Processes ACT. The standards being proposed today for process back-end emissions are primarily based on State permit conditions that restrict the amount of residual HAP in the raw polymer product that is sent to the back-end operations.

Tables 2 and 3 summarize the level of control being proposed for new and existing sources, respectively. Where the level of control is the same as the HON for storage vessels, equipment leaks, and wastewater, this is indicated in the table as ''HON.'' When ''HON/ACT'' is used in the table, the level of control for continuous front-end process vents is equal to the HON level of control, and the level of control for batch front-end process vents is equal to the 90 percent control level from the Batch Processes ACT. The following sections describe today's proposed standards in more detail, by emission source type. The rationale on which regulatory components are based is summarized in the Basis and Purpose Document, which is available as described in the introductory material of this Preamble.

TABLE 2.—SUMMARY OF PROPOSED STANDARDS FOR EXISTING SOURCES

Subcategory	Level of proposed standard [a]				
	Storage	Front-end process vents	Back-end process emissions	Wastewater	Equipment leaks
Br, HBR	HON	HON/ACT,[b] exempting halogenated vent streams controlled by flare of boiler before porposal date.	No control	NON	HON
EPI, HYP, NEO, NBL, NBR, PSR, SBL	HON	HON/ACT	No control	HON	HON
EPR, PBR/SBRS,SBRE	HON	HON/ACT	MACT floor residual HAP limit.	HON	HON

[a] HON—the level of the standard is equivalent to existing source provisions of subpart G of 40 CFR 63 for storage and wastewater, and subpart H of 40 CFR 63 for equipment leaks.
[b] HON/ACT—the level of the standard for continuous front-end process vents is equal to the existing source process vent provisions in subpart G of 40 CFR 63, and the level of the standard for batch front-end process vents is equal to the 90 percent control level from the Batch Processes ACT.

TABLE 3.—SUMMARY OF PROPOSED STANDARDS FOR NEW SOURCES

Subcategory	Level of standard				
	Storage	Front-end process vents	Back-end process emissions	Wastewater	Equipment leaks
BR, EPI, HBR, HYP, NEO, NBL, NBR, SBL	New source HON [a].	New source HON/ACT [b].	no control	New source HON.	New source HON.
EPR, PBR/SBRS, SBRE	New source HON.	New source HON/ACT.	New source floor residual HAP limit.	New source HON.	New source HON.

[a] HON—the level of the standard is equivalent to new source provisions of subpart G of 40 CFR 63 for storage and wastewater, and subpart H of 40 CFR 63 for equipment leaks.
[b] HON/ACT—the level of the standard for continuous front-end process vents is equal to the new source process vent provisions in subpart G of 40 CFR 63, and the level of the standard for batch front-end process vents is equal to the 90 percent control level from the Batch Processes ACT.

1. Storage Vessels

For all subcategories, the storage vessel requirements are identical to the HON storage vessel requirements in subpart G. A storage vessel means a tank or other vessel that is associated with an elastomer product process unit and that stores a liquid containing one or more organic HAP. The proposed rule specifies assignment procedures for determining whether a storage vessel is associated with an elastomer product process unit. The storage vessel provisions do not apply to the following: (1) Vessels permanently attached to motor vehicles, (2) pressure vessels designed to operate in excess of 204.9 kpa (29.7 psia), (3) vessels with capacities smaller than 38 m^3 (10,000 gal), (4) wastewater tanks, and (5) vessels storing liquids that contain organic HAP only as impurities. An impurity is produced coincidentally with another chemical substance and is processed, used, or distributed with it.

In addition to those vessels that do not meet the definition of storage vessels, today's proposed standards exempt certain storage vessels containing latex. Specifically, storage vessels containing a latex, located downstream of the stripping operations, are exempt from the storage vessel requirements of the proposed rule.

The owner or operator must determine whether a storage vessel is Group 1 or Group 2; Group 1 storage vessels require control. The criteria for determining whether a storage vessel is Group 1 or Group 2 are shown in Table 4, and are the same as the HON criteria.

TABLE 4.—GROUP 1 STORAGE VESSEL CRITERIA

Vessel Capacity (cubic meters)	Vapor Pressure [a]
Existing sources	
75 ≤ capacity < 151	≥13.1
151 ≤ capacity	≥5.2
New sources	
38 ≤ capacity < 151	≥13.1
151 ≤ capacity	≥0.7

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

The storage provisions require that one of the following control systems be applied to Group 1 storage vessels: (1) An internal floating roof with proper seals and fittings; (2) an external floating roof with proper seals and fittings; (3) an external floating roof converted to an internal floating roof with proper seals and fittings; or (4) a closed vent system with a 95-percent efficient control device. The storage provisions give details on the types of seals and fittings required. Monitoring and compliance provisions include periodic visual inspections of vessels, roof seals, and fittings, as well as internal inspections. If a closed vent system and control device is used, the owner or operator must establish appropriate monitoring procedures. Reports and records of inspections, repairs, and other information necessary to determine compliance are also required by the storage provisions. No controls are required for Group 2 storage vessels.

2. Front-End Process Vents

There are separate provisions in the proposed rule for front-end process vents that originate from unit operations operated in a continuous mode, and those from unit operations operated in a batch mode. An affected source could be subject to both the continuous and

batch front-end process vent provisions if front-end operations at an elastomer production process unit consist of a combination of continuous and batch unit operations. The continuous provisions would be applied to those vents from continuous unit operations, and the batch provisions to vents from batch unit operations.

a. *Continuous Front-End Process Vents.* The provisions in the proposed rule for continuous front-end process vents are the same as the HON process vent provisions in subpart G. Continuous front-end process vents are gas streams that originate from continuously operated units in the front-end of an elastomer process, and include gas streams discharged directly to the atmosphere and gas streams discharged to the atmosphere after diversion through a product recovery device. The continuous front-end process vent provisions apply only to vents that emit gas streams containing more than 0.005 weight-percent HAP.

A Group 1 continuous front-end process vent is defined as a continuous front-end process vent with a flow rate greater than or equal to 0.005 scmm, an organic HAP concentration greater than or equal to 50 ppmv, and a total resource effectiveness (TRE) index value less than or equal to 1.0. The continuous front-end process vent provisions require the owner or operator of a Group 1 continuous front-end process vent stream to: (1) Reduce the emissions of organic HAP using a flare; (2) reduce emissions of organic HAP by 98 weight-percent or to a concentration of 20 ppmv or less; or (3) achieve and maintain a TRE index above 1. Performance test provisions are included for Group 1 continuous front-end process vents to verify that the control device achieves the required performance.

The organic HAP reduction is based on the level of control achieved by the reference control technology. Group 2 continuous front-end process vent streams with TRE index values between 1.0 and 4.0 are required to monitor those process vent streams to ensure those streams do not become Group 1, which require control.

The owner or operator can calculate a TRE index value to determine whether each process vent is a Group 1 or Group 2 continuous front-end process vent, or the owner or operator can elect to comply directly with the control requirements without calculating the TRE index. The TRE index value is determined after the final recovery device in the process or prior to venting to the atmosphere. The TRE calculation involves an emissions test or engineering assessment and use of the TRE equations in § 63.115 of subpart G.

The rule encourages pollution prevention through product recovery because an owner or operator of a Group 1 continuous front-end process vent may add recovery devices or otherwise reduce emissions to the extent that the TRE becomes greater than 1.0 and the Group 1 continuous front-end process vent becomes a Group 2 continuous front-end process vent.

Group 1 halogenated streams controlled using a combustion device must vent the emissions from the combustor to an acid gas scrubber or other device to limit emissions of halogens prior to venting to the atmosphere. The control device must reduce the overall emissions of hydrogen halides and halogens by 99 percent or reduce the outlet mass emission rate of total hydrogen halides and halogens to less than 0.45 kg/hr.

The proposed rule exempts certain halogenated process vent streams from the requirement to control the halogens at the exit from a combustion device. Specifically, halogenated continuous front-end process vents at affected sources producing butyl or halobutyl rubber are exempt from the requirements to control hydrogen halides and halogens from the outlet of combustion devices. However, the proposed rule requires that these vent streams be controlled in accordance with the other Group 1 requirements for continuous front-end process vents.

Monitoring, reporting, and recordkeeping provisions necessary to demonstrate compliance are also included in the continuous front-end process vent provisions. Compliance with the monitoring provisions is based on a comparison of daily average monitored values to enforceable parameter ''levels'' established by the owner or operator. A difference in the proposed rule and the HON is that the procedure for determining the enforceable parameter monitoring level for continuous process vents is both more specific and restrictive than that in subpart G. Subpart G allows the use of engineering assessments and manufacturers' recommendations in establishing the enforceable level, while the proposed rule would require that the level be established entirely based on the monitoring conducted during the compliance test. The level is established as the average of the maximum (or minimum) monitored point values for the three test runs. That is, if the operating parameter to be established is a maximum, the value of the parameter shall be the average of the maximum values from each of the three test runs. Likewise, if the operating parameter to be established is a minimum, the value of the parameter shall be the average of the minimum values from each of the three test runs.

b. *Batch Front-End Process Vents.* Process vents that include gas streams originating from batch unit operations in the front-end of an elastomer product process unit are subject to the batch front-end process vent provisions of the proposed rule. Consistent with provisions in the proposed rule for other emission source types, batch front-end process vents are classified as Group 1 or Group 2, with control being required for Group 1 batch front-end process vents.

An important aspect of the batch front-end process vent provisions is that applicability is on an individual vent basis. All batch emission episodes that are emitted to the atmosphere through the vent are to be considered in the group determination. The proposed rule does not require that emissions from similar batch unit operations emitted from different vents be combined for applicability determinations. In other words, if a process included four batch reactors, and each reactor had a dedicated vent to the atmosphere, applicability would be determined for each reactor.

The applicability criteria of the batch front-end process vent provisions are from the Batch Processes ACT, and are based on volatility and annual emissions of the HAP emitted from the vent, and the average flow rate of the vent stream. The vent stream characteristics are determined at the exit from the batch unit operation before any emission control or recovery device. The proposed rule specifies that reflux condensers, condensers recovering monomer or solvent from a batch stripping operation, and condensers recovering monomer or solvent from a batch distillation operation are considered part of the unit operation. Therefore, the batch front-end process vent applicability criteria would be applied after these condensers.

The first step in the applicability determination is to calculate the annual HAP emissions. Annual HAP emissions may be calculated using equations contained in the regulation (which are from the Batch Processes ACT) and/or testing. Engineering assessment may also be used if the equations are not appropriate and testing is not feasible. Batch front-end process vents with annual HAP emissions less than 225 kilograms per year are exempt from all batch front-end process vent requirements, other than the

requirement to estimate annual HAP emissions.

All batch front-end process vents with annual emissions greater than 225 kilograms per year are required to determine the volatility class of the vent. The volatility class of the batch front-end process vent is based on the weighted average vapor pressure of HAP emitted annually from the vent. There are three volatility classes—low, medium, and high, which are shown in Table 5.

TABLE 5.—BATCH FRONT-END PROCESS VENT VOLATILITY CLASSES

Vent volatility class	WAVP [a] kilopascals
low	< 10
moderate	10 ≤ vp < 20
high	≥ 20

[a] Weighted average vapor pressure of batch front-end process vent.

There are two tiers of Group 2 batch front-end process vents. First, if the annual HAP emissions of a vent are below specified cutoff levels, the batch front-end process vent is classified as a Group 2 vent, and a batch cycle limitation must be established (discussed below). These cutoff emission levels are 11,800 kilograms HAP per year for low volatility vents, 7,300 kilograms HAP per year for medium volatility vents, and 10,500 kilograms HAP per year for high volatility vents.

If annual HAP emissions are greater than the cutoff emission levels specified above, the owner must determine the annual average flow rate of the batch front-end process vent, and the ''cutoff flow rate'' using the equation in the proposed rule for the appropriate volatility class. The Group 1/Group 2 classification is then based on a comparison between the actual annual average flow rate, and the cutoff flow rate. If the actual flowrate is less than the calculated cutoff flowrate, then the batch process vent is a Group 1 vent under today's proposed standards, and control is required. If the actual flowrate is greater than the calculated cutoff flowrate, then the batch process vent is a Group 2 batch front-end process vent, and the owner or operator must establish a batch cycle limitation.

Owners and operators of Group 2 batch front-end process vents must establish a batch cycle limitation that ensures that HAP emissions from the vent do not increase to a level that would make the batch front-end process vent Group 1. The batch cycle limitation is an enforceable restriction on the number of batch cycles that can be performed in a year. An owner or operator has two choices regarding the level of the batch cycle limitation. The limitation may be set to maintain emissions below the annual emission cutoff levels listed above, or the limitation may be set to ensure that annual emissions do not increase to a level that makes the calculated cutoff flow rate increase beyond the actual annual average flow rate. The advantage to the first option is that the owner or operator would not be required to determine the annual average flow rate of the vent. A batch cycle limitation does not limit production to any previous production level, but is based on the number of cycles necessary to exceed one of the two batch front-end process vent applicability criteria discussed above.

The batch front-end process vent provisions require the owner or operator of a Group 1 batch front-end process vent stream to: (1) Reduce the emissions of organic HAP using a flare or (2) reduce emissions of organic HAP by 90 weight-percent over each batch cycle using a control or recovery device. If a halogenated batch vent stream (defined as a vent that has a mass emission rate of halogen atoms in organic compounds of 3,750 kilograms per year or greater) is sent to a combustion device, the outlet stream must be controlled to reduce emissions of hydrogen halides and halogens by 99 percent.

Control could be achieved at varying levels for different emission episodes as long as the required level of control for the batch cycle was achieved. The owner or operator could even elect to control some emission episodes and by-pass control for others. Performance test provisions are included for Group 1 batch front-end process vents to verify that the control device achieves the required performance.

Monitoring, reporting, and recordkeeping provisions necessary to demonstrate compliance are also included in the batch front-end process vent provisions. These provisions are modeled after the analogous continuous process vent provisions in the HON. Compliance with the monitoring provisions is based on a comparison of batch cycle daily average monitored values to enforceable parameter monitoring levels established by the owner or operator.

The proposed provisions for batch front-end process vents contain three conditions that can greatly simplify compliance. First, an owner or operator can control a batch front-end process vent in accordance with the Group 1 batch front-end process vent requirements and bypass the applicability determination. Second, if a batch front-end process vent is combined with a continuous vent stream before a recovery or control device, the owner or operator is exempt from all batch front-end process vent requirements. However, applicability determinations, tests, etc. for the continuous vent must be conducted at conditions when the addition of the batch vent streams makes the HAP concentration in the combined stream greatest. Finally, if batch front-end process vents combined to create a ''continuous'' flow to a control or recovery device, the less complicated continuous process vent monitoring requirements are used.

3. Process Back-End Operations

Process back-end operations include all operations at an elastomer product process unit that occur after the stripping operations. These operations include, but are not limited to, filtering, drying, separating, and other finishing operations, as well as product storage.

The back-end process provisions contain residual HAP limitations for three subcategories: Ethylene propylene rubber (EPR), polybutadiene rubber and/or styrene butadiene rubber by solution (PBR/SBRS), and styrene butadiene rubber by emulsion (SBRE). The limitations for EPR and PBR/SBRS are in units of kilograms HAP per megagram of crumb rubber dry weight (crumb rubber dry weight means the weight of the polymer, minus the weight of water, residual organics, carbon black, and extender oils), and the limitation for SBRE is in units of kilogram HAP per megagram latex. The limitation is a weekly average weighted based on the weight of rubber or latex processed in the stripper. Two methods of compliance are available: (1) Stripping the polymer to remove the residual HAP to the levels in the standards, on a weekly weighted average basis, or (2) reducing emissions using add-on control to a level equivalent to the level that would be achieved if stripping was used.

a. *Compliance Using Stripping Technology.* If stripping is the method of compliance selected, the proposed rule allows two options for demonstrating compliance: By sampling and by monitoring stripper operating parameters. If compliance is demonstrated by sampling, samples of the stripped wet crumb or stripped latex must be taken immediately after the stripper and analyzed to determine the residual HAP content. The EPA is specifically requesting comments on the safety aspects associated with the

sampling location of the wet crumb or stripped latex.

A sample must be taken once per grade per day or once per batch per day. The sample must be analyzed to determine the residual HAP content, and the corresponding weight of rubber or latex processed in the stripper must be recorded. This information is then used to calculate a weekly weighted average. A weekly weighted average that is above the limitation is a violation of the standard, as is a failure to sample and analyze at least 75 percent of the samples required during the week. The EPA has developed test methods that would be used to determine compliance with the standard, which are proposed separately in today's **Federal Register**. Records of each test result would be required, along with the corresponding weight of the polymer processed in the stripper. Records of the weekly weighted averages must also be maintained.

An owner or operator complying using stripping can also demonstrate compliance by continuously monitoring stripper operating parameters. If using this approach, the owner or operator must establish stripper operating parameters for each grade of polymer processed in the stripper, along with the corresponding residual HAP content of that grade. The parameters that must be monitored include, at a minimum, temperature, pressure, steaming rates (for steam strippers), and some parameter that is indicative of residence time. The HAP content of the grade must be determined initially using the proposed residual HAP test methods discussed above. The owner or operator can elect to establish a single set of stripper operating parameters for multiple grades. As discussed in section V of today's notice, the EPA is requesting comments on the use of predictive computer modeling in place of stripper parameter monitoring.

A difference in the demonstration of compliance by sampling, and the demonstration of compliance by monitoring stripping parameters, is that the monitoring option is entirely based on a grade or batch. To further explain, if a particular grade of polymer is processed in the stripped continuously for 32 hours, a sample of that grade is required to be taken each operating day, if the sampling compliance demonstration option is selected. However, if the stripping parameter monitoring option is selected, the entire length of time the grade is being processed in the stripper is treated as a single unit.

During the operation of the stripper, the parameters must be continuously monitored, with a reading of each parameter taken at least once every 15 minutes. If, during the processing of a grade, all hourly average parameter values are in accordance with the established levels, the owner or operator can use the HAP content determined initially in the calculation of the weekly weighted average, and sampling is not required. However, if one hourly average value for any parameter is not in accordance with the established operating parameter, a sample must be taken and the HAP content determined using the proposed test methods to be used in calculating the weekly weighted average.

Records of the initial residual HAP content results, along with the corresponding stripper parameter monitoring results for the sample, must be maintained. The hourly average monitoring results are required to be maintained, along with the results of any HAP content tests conducted due to exceedance of the established parameter monitoring levels. Records must also be kept of the weight of polymer processed in each grade, and the weekly weighted average values.

If complying with the residual HAP limitations using stripping technology, and demonstrating compliance by monitoring stripper parameters, there are three ways a facility can be in violation of the standard. First, a weekly weighted average that is above the limitation is a violation of the standard, as is a failure to sample and analyze a sample for a grade with an hourly average parameter value not in accordance with the established monitoring parameter levels. The third way for a facility to be out of compliance is if the stripper monitoring data are not sufficient for at least 75 percent of the grades produced during the week. Stripper data are considered insufficient if monitoring parameters are obtained for less than 75 percent of the 15 minute periods during the processing of a grade.

b. *Compliance Using Add-On Control.* If add-on control is the method of compliance selected, there are two levels of compliance. Initial compliance is based on a source test, and continuous compliance is based on the daily average of parameter monitoring results for the control or recovery device.

The initial performance test must consist of three 1-hour runs or three complete batch cycles, if the duration of the batch cycle is less than 1 hour. The test runs must be conducted during processing of ''worst-case'' grade, which means the grade with the highest residual HAP content leaving the stripper. The ''uncontrolled'' residual HAP content in the latex or wet crumb rubber must be determined, using the proposed test methods, after the stripper. Then, when the crumb for which the uncontrolled residual HAP was determined is being processed in the back-end unit operation being controlled, the inlet and outlet emissions for the control or recovery device must be determined using Method 18. The uncontrolled HAP content is then adjusted to account for the reduction in emissions by the control or recovery device, and compared to the levels in the standard. For initial compliance, the adjusted residual HAP content level for each test run must be less than the level in today's proposed standards.

During the initial test, the appropriate parameter must be monitored, and an enforceable ''level'' established as a maximum or minimum operating parameter based on this monitoring. As with continuous front-end process vents, the level is established as the average of the maximum (or minimum) point values for the three test runs.

Continuous monitoring must be conducted on the control or recovery device, and compliance is based on the daily average of the monitoring results. The monitoring, recordkeeping, and reporting provisions are the same as the process vent provisions in the HON, which are required for continuous front-end process vents in today's proposed standard.

c. *Carbon disulfide limitations for styrene butadiene rubber by emulsion producers.* Today's proposed regulation would reduce carbon disulfide (CS_2) emissions from styrene butadiene rubber producers using an emulsion process by limiting the concentration of CS_2 in the dryer vent stacks to 10 ppmv. Sulfur-containing shortstopping agents used to produce certain grades of rubber have been determined to be the source of CS_2 in the dryer stacks. Owners or operators would be required to develop standard operating procedures for each grade that uses a sulfur-containing shortstopping agent. These standard operating procedures would specify the type and amount of agent added, and the point in the process where the agent is added. One standard operating procedure can be used for more than one grade if possible.

For each standard operating procedure, the owner or operator would be required to conduct a performance test to measure the concentration of CS_2 in the dryer stack(s). A particular standard operating procedure would be acceptable if the average CS_2 concentration for the three required test

runs was less than 10 ppmv. The facility would be in compliance with this section of the proposed regulation if the appropriate standard operating procedure is followed whenever a sulfur-containing shortstopping agent is used. Facilities that route dryer vents to a combustion device would be exempt from this section of the regulation.

4. Wastewater Operations

For all subcategories, the wastewater provisions are identical to the wastewater provisions in subparts F and G. The proposed rule applies to any organic HAP-containing water, raw material, intermediate, product, by-product, co-product, or waste material that exits any elastomer production process unit equipment and has either (1) a total volatile organic HAP concentration of 5 ppmw or greater and a flow rate of 0.02 *f*pm or greater; or (2) a total volatile organic HAP concentration of 10,000 ppmw or greater at any flow rate. ''Wastewater,'' as defined in § 63.101 of subpart F, encompasses both maintenance wastewater and process wastewater. The process wastewater provisions also apply to organic HAP-containing residuals that are generated from the management and treatment of Group 1 wastewater streams. Examples of process wastewater streams include, but are not limited to, wastewater streams exiting process unit equipment (e.g., decanter water, such as condensed steam used in the process), feed tank drawdown, vessel washout/cleaning that is part of the routine batch cycle, and residuals recovered from waste management units. Examples of maintenance wastewater streams are those generated by descaling of heat exchanger tubing bundles, cleaning of distillation column traps, and draining of pumps into an individual drain system. Wastewater streams generated downstream of the stripper (i.e., back-end wastewater streams) located at facilities that are subject to a back-end emission limitation, are exempt from the wastewater requirements.

a. *Maintenance wastewater.* For maintenance wastewater, the proposed rule incorporates the requirements of § 63.105 of subpart F for maintenance wastewater. This requires owners or operators to prepare a description of procedures that will be used to manage HAP-containing wastewater created during maintenance activities, and to implement these procedures.

b. *Process wastewater.* The Group 1/Group 2 approach is also used for the HON process wastewater provisions, with Group 1 process wastewater streams requiring control. For existing sources, a Group 1 wastewater stream is one with an average flow rate greater than or equal to 10 liters per minute and a total VOHAP average concentration greater than or equal to 1,000 parts per million by weight. For new sources, a Group 1 wastewater stream is one with an average flow rate greater than or equal to 0.02 liter per minute and an average concentration of 10 parts per million by weight or greater.

An owner or operator may determine the VOHAP concentration and flow rate of a wastewater stream either (1) at the point of generation; or (2) downstream of the point of generation. If wastewater stream characteristics are determined downstream of the point of generation, an owner or operator must make corrections for losses by air emissions; reduction of VOHAP concentration or changes in flow rate by mixing with other water or wastewater streams; and reduction in flow rate or VOHAP concentration by treating or otherwise handling the wastewater stream to remove or destroy HAP. An owner or operator can determine the flow rate and VOHAP concentration for the point of generation by (1) sampling; (2) using engineering knowledge; or (3) using pilot-scale or bench-scale test data. Both the applicability determination and the Group 1/Group 2 determination must reflect the wastewater characteristics before losses due to volatilization, a concentration differential due to dilution, or a change in VOHAP concentration or flow rate due to treatment.

There are instances where an owner or operator can bypass the group determination. An owner or operator is allowed to designate a wastewater stream or mixture of wastewater streams to be a Group 1 wastewater stream without actually determining the flow rate and VOHAP concentration for the point of generation. Using this option, an owner or operator can simply declare that a wastewater stream or mixture of wastewater streams is a Group 1 wastewater stream and that the emissions from the stream(s) are controlled from the point of generation through treatment. An owner or operator is required to determine the wastewater stream characteristics (i.e., VOHAP concentration and flow rate) for the designated Group 1 wastewater stream in order to establish the treatment requirements in section 63.138. Also, an owner or operator who elects to use the process unit alternative in § 63.138(d) of subpart G or the 95-percent biological treatment option in section 63.138(e) of subpart G is not required to make a Group 1/Group 2 determination.

Controls must be applied to Group 1 wastewater streams, unless the source complies with the source-wide mass flow rate provisions of §§ 63.138(c)(5) or (c)(6) of subpart G; or implements process changes that reduce emissions as specified in § 63.138(c)(7) of subpart G. Control requirements include (1) suppressing emissions from the point of generation to the treatment device; (2) recycling the wastewater stream or treating the wastewater stream to the required Fr values for each HAP as listed in table 9 of subpart G (The required Fr values in table 9 of subpart G are based on steam stripping); (3) recycling any residuals or treating any residuals to destroy the total combined HAP mass flow rate by 99 percent or more; and (4) controlling the air emissions generated by treatment processes. While emission controls are not required for Group 2 wastewater streams, owners or operators may opt to include them in management and treatment options.

Suppression of emissions from the point of generation to the treatment device will be achieved by using covers and enclosures and closed vent systems to collect organic HAP vapors from the wastewater and convey them to treatment devices. Air emissions routed through closed-vent systems from covers, enclosures, and treatment processes must be reduced by 95 percent for combustion or recovery devices; or to a level of 20 ppmv for combustion devices.

The treatment requirements are designed to reduce the HAP content in the wastewater prior to placement in units without air emissions controls, and thus to reduce the HAP emissions to the atmosphere. The final rule provides several compliance options, including percent reduction, effluent concentration limitations, and mass removal.

For demonstrating compliance with the various requirements, owners or operators have a choice of using a specified design, conducting performance tests, or documenting engineering calculations. Appropriate compliance, monitoring, reporting, and recordkeeping provisions are included in the regulation.

5. Equipment Leaks

The equipment leak provisions in the proposed rule refer directly to the requirements contained in subpart H. In fact, many of the elastomer facilities are already subject to subpart H requirements through subpart I. Following is a summary of the subpart H requirements.

The standards would apply to equipment in organic HAP service 300 or more hours per year that is associated with a elastomer product process unit, including valves, pumps, connectors, compressors, pressure relief devices, open-ended valves or lines, sampling connection systems, instrumentation systems, surge control vessels, bottoms receivers, and agitators. The provisions also apply to closed vent systems and control devices used to control emissions from any of the listed equipment.

a. *Pumps and valves.* Today's proposed standard requires leak detection and repair for pumps in light liquid service and for valves in gas or light liquid service. Standards for both are implemented in three phases. The first and second phases for both types of equipment consist of a leak detection and repair (LDAR) program, with lower leak definitions in the second phase. The LDAR program involves a periodic check for organic vapor leaks with a portable instrument; if leaks are found, they must be repaired within a certain period of time. In the third phase, the periodic monitoring (a work practice standard) is combined with a performance requirement for an allowable percent leaking components.

The standard requires monthly monitoring of pumps using an instrument and weekly visual inspections for indications of leaks. In the first two phases of the valve standard, quarterly monitoring is required. In phase three, semiannual or annual monitoring may be used by process units with less than 1 percent and less than 0.5 percent leaking valves, respectively.

In phase three, if the base performance levels for a type of equipment are not achieved, owners or operators must, in the case of pumps, enter into a quality improvement program (QIP), and in the case of valves may either enter into a QIP or implement monthly LDAR. The QIP is a concept that enables plants exceeding the base performance levels to eventually achieve the desired levels without incurring penalty or being in a noncompliance status. As long as the requirements of the QIP are met, the plant is in compliance. The basic QIP consists of information gathering, determining superior performing technologies, and replacing poorer performers with the superior technologies until the base performance levels are achieved.

b. *Connectors.* The rule also requires leak detection and repair of connectors in gas or light liquid service. The monitoring frequency for connectors is determined by the percent leaking connectors in the process unit and the consistency of performance. Process units that have 0.5 percent or greater leaking connectors are required to monitor all connectors annually. Units that have less than 0.5 percent may monitor biannually and units that show less than 0.5 percent for two monitoring cycles may monitor once every 4 years.

c. *Other equipment.* Subpart H also contains standards for other types of equipment, compressors, open-ended lines, pressure relief devices, and sampling connection systems. Compressors are required to be controlled using a barrier-fluid seal system, by a closed vent system to a control device, or must be demonstrated to have no leaks greater than 500 ppm. Open-ended lines must be capped or plugged. Pressure relief devices are required to be controlled using a closed vent system to a control device, a rupture disk, or must be demonstrated to have no leaks greater than 500 ppm HAP. Sampling connections must be a closed-purge or closed-loop system, or must be controlled using a closed vent system to a control device. Agitators must either be monitored for leaks or use systems that are better designed, such as dual mechanical seals. Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service are subject to instrument monitoring only if evidence of a potential leak is found through sight, sound, or smell. Instrumentation systems consist of smaller pipes and tubing that carry samples of process fluids to be analyzed to determine process operating conditions or systems for measurement of process conditions.

Surge control vessels and bottoms receivers are required to be controlled using a closed vent system vented to a control device. However, the applicability of controls to surge control vessels and bottoms receivers is based on the size of the vessel and the vapor pressure of the contents. Controls are required for surge control vessels and bottoms receivers meeting the criteria for Group 1 storage vessels. Further, in the proposed elastomer production provisions, surge control vessels and bottoms receivers located downstream from the stripper, that contain latex, are exempt from the equipment leak provisions.

d. *Other provisions.* Under certain conditions delay of repair beyond the required period may be acceptable. Examples of these situations include where: (1) A piece of equipment cannot be repaired without a process unit shutdown, (2) equipment is taken out of organic HAP service, (3) emissions from repair will exceed emissions from delay of repair until the next shutdown, and (4) equipment with better leak performance such as pumps with single mechanical seals are replaced with dual mechanical seals.

In addition, specific alternative standards are included for batch processes and enclosed buildings. For batch processes, the owner or operator can choose either to meet similar standards to those for continuous processes with monitoring frequency pro-rated to time in use of organic HAP, or to periodically pressure test the entire system. For enclosed buildings, the owner or operator may forego monitoring if the building is kept under a negative pressure and emissions are routed through a closed vent system to an approved control device.

The equipment leak standards require the use of Method 21 of appendix A of part 60 to detect leaks. Method 21 requires a portable organic vapor analyzer to monitor for leaks from equipment in use. Test procedures using either a gas or a liquid for pressure testing the batch system are specified to detect for leaks.

The standards would require certain records to demonstrate compliance with the standard and the records must be retained in a readily accessible recordkeeping system. Subpart H requires that records be maintained of equipment that would be subject to the standards, testing associated with batch processes, design specifications of closed vent systems and control devices, test results from performance tests, and information required by equipment in QIP.

6. Emissions Averaging

Today's proposed standards would apply basically the same emissions averaging scheme as has been adopted by the HON, although the emissions averaging provisions of the proposed rule are entirely contained in the proposed rule instead of referring to the subpart G emissions averaging provisions. Only owners or operators of existing sources may use emissions averaging. In addition, emissions averaging is only allowed within an affected source, where an affected source is generally defined as each process unit at a plant site that produces one of the twelve types of elastomer products. All HAP emissions, except those from batch front-end process vents, equipment leaks, and wastewater streams treated in a biological treatment unit, are allowed to be included in the average Up to 20 emission points may be included in emissions averages for all

affected sources at a single plant site (this is increased to 25 emission points where pollution prevention measures are used to control emission points to be included in an average). It is important to stress that the emission point limit is on a ''plant site'' basis, where the plant site is defined as all contiguous or adjoining property that is under common control. Therefore, if a plant site contains more than one affected source (i.e., different processes manufacturing more than one elastomer product), the 20 emission points allowed in emissions averages must be shared among the different processes. It should again be noted that the sharing of the number of emission points between affected sources does not mean that emission credits and debits can be shared between affected sources. In addition, the owner or operator must demonstrate that the averaging scheme will not result in greater hazard or risk relative to strict compliance with the standards in the absence of averaging.

The NESHAP for Polymers and Resins IV, which was proposed on March 29, 1995, contains a maximum number of emission points per subcategory (rather than per plant site) that can be included in emissions averaging. It is the EPA's intent, depending on consideration of public comments on both rules, to change Polymers and Resins IV to be like Polymers and Resins I (20–25 emission points per plant site), or at least to make the rules the same or consistent at promulgation.

The owner or operator must identify all the emission points that would be included in an emissions average and estimate their allowable and actual emissions using the reference efficiencies of the reference control technologies for each kind of emission point.

For each Group 1 point, the allowable emissions level is the emissions remaining after application of a reference control technology. As a result, all Group 1 emission points that are not being controlled with the reference control technology or a control measure achieving an equivalent reduction are emitting more than their allowable emissions. These points are generating emission ''debits.'' Emission debits are calculated by subtracting the amount of emissions allowed by the standard for a given emission point from the amount of actual emissions for that point. If a Group 1 emission point is controlled by a device or a pollution prevention measure that does not achieve the control level of the reference control technology, the amount of emission debits will be based on the difference between the actual control level being achieved and what the reference control would have achieved. Equations for calculating debits are provided in the proposed rule.

The owner or operator must control other emission points to a level more stringent than what is required for that kind of point to generate emission ''credits.'' Emission credits are calculated by subtracting the amount of emissions that actually exist for a given emission point from the amount of emissions that would be allowed under today's proposed rule, and then applying a 10-percent discount factor. If credits are generated through the use of a pollution prevention measure, no discount factor is applied. The discount factor mimics provisions in the HON.

Justification for inclusion of a discount factor and for the level at which it is set were discussed in the Preamble to the final HON rule.[1] Equations for calculating credits are also provided in today's proposed rule. To be in compliance, the owner or operator must be able to show that the source's emission credits were greater than or equal to its emission debits.

Credits may come from: (1) Control of Group 1 emission points using technologies that the EPA has rated as being more effective than the appropriate reference control technology; (2) control of Group 2 emission points; and (3) pollution prevention projects that result in control levels more stringent than what the standard requires for the relevant point or points.

A reference control technology cannot be used to generate credits beyond its assigned efficiency. For a new control technology or work practice, either the EPA or the permit authority must determine its control efficiency before it can be used to generate credits.

Today's proposed rule also grants State and local implementing agencies the discretion to preclude sources from using emissions averaging. This is also consistent with the HON provisions.

G. Recordkeeping and Reporting Requirements

Specific recordkeeping and reporting requirements related to each emission source type are included in the applicable sections of the proposed rule. Section 63.491 of the proposed rule provides general reporting, recordkeeping, and testing requirements.

The general reporting, recordkeeping, and testing requirements of this subpart are very similar to those found in subparts F and G. The proposed rule also incorporates provisions of subpart A of part 63. A table included in the proposed rule designates which sections of subpart A apply to the proposed rule.

The proposed rule requires sources to keep records and submit reports of information necessary to determine applicability and document compliance. The proposed rule requires retention of hourly average values (or batch cycle average values) of monitored parameters for operating days when there is not an excursion. If there is a monitoring parameter excursion, the 15-minute values for the excursion period must be retained. The proposed rule also requires that records of all residual HAP content test results. Records must be kept for 5 years.

Section 63.491 of the proposed rule lists the following types of reports that must be submitted to the Administrator as appropriate: (1) Initial Notification, (2) Application for Approval of Construction or Reconstruction, (3) Implementation Plan (if an operating permit application has not been submitted, (4) Emissions Averaging Plan, (5) Notification of Compliance Status, (6) Periodic Reports, and (7) other reports. The requirements for each of the seven types of reports are summarized below.

In addition, § 63.491 incorporates the reporting requirements of subpart H, which requires owners and operators to submit three types of reports: (1) An Initial Notification; (2) a Notification of Compliance Status; and (3) Periodic Reports.

1. Initial Notification

The Initial Notification is due 120 days after the date of promulgation for existing sources. For new sources, it is due 180 days before commencement of construction or reconstruction, or 45 days after promulgation, whichever is later. Owners or operators can submit one Initial Notification to comply with both the requirements of § 63.491 of the proposed rule and the requirements of subpart H. The notification must list the elastomer processes that are subject to the proposed rule, and which provisions may apply (e.g., storage vessels, continuous front-end process vents, batch front-end process vents, back-end process, wastewater, and/or equipment leak provisions). A detailed identification of emission points is not necessary for the Initial Notification. The notification, however, must include a statement of whether the source expects that it can achieve compliance by the specified compliance date.

[1] United States Environmental Protection Agency. 59 FR 19430, Friday, April 22, 1994. National Emission Standards for Hazardous Air Pollutants for Certain Source Categories; Final Rule.

2. Application for Approval of Construction or Reconstruction

The proposed rule requires that the owners or operator comply with § 63.5 of subpart A regarding the application for approval of construction or reconstruction, with one exception. The information required to be included in the Implementation Plan must be submitted as part of the application for approval of construction or reconstruction.

3. Implementation Plan

The Implementation Plan details how the source plans to comply. Implementation Plans are required only for existing sources that have not yet submitted operating permit applications. New sources are required to submit the information normally required in the Implementation Plan as part of the Application for Approval of Construction or Reconstruction. Implementation Plans are due 12 months prior to the date of compliance. The information in the Implementation Plan should be incorporated into the source's operating permit application. The terms and conditions of the plan, as approved by the permit authority, would then be incorporated into the operating permit.

The Implementation Plan would include a list of emission points subject to the storage vessels, continuous front-end process vents, batch front-end process vents, wastewater operations, and equipment leak provisions and, as applicable, whether each emission point (e.g., storage vessel or process vent) is Group 1 or Group 2. The control technology or method of compliance planned for each Group 1 emission point must be specified. In addition, the Implementation Plan must identify if the facility has back-end process emission operations that are subject to a back-end emission limitation. If the facility is subject to a back-end emission limitation, the owner or operator must specify if compliance will be achieved using stripping technology or add-on control. Additionally, the owner or operator must specify if continuous compliance using stripping technology will be demonstrated by sampling or by monitoring stripper parameters.

The plan must also certify that appropriate testing, monitoring, reporting, and recordkeeping will be done for each Group 1 emission point of subject process back-end. If a source requests approval to monitor a unique parameter, a rationale must be included.

4. Emissions Averaging Plan

The Emissions Averaging Plan would be due 18 months prior to the date of compliance. New sources are not allowed to comply through the use of emissions averaging. The owner or operator must demonstrate that the emissions described in the Plan will not result in greater hazard or risk to human health or the environment than would result if the emissions points were controlled through the traditional provisions on the rule.

For points included in emissions averaging, the Emissions Averaging Plan would include: An identification of all points in the average and whether they are Group 1 or Group 2 points; the specific control technique or pollution prevention measure that will be applied to each point; the control efficiency for each control used in the average; the projected credit or debit generated by each point; and the overall expected credits and debits. The plan must also certify that the same types of testing, monitoring, reporting, and recordkeeping that are required by the proposed rule for Group 1 points will be done for all points (both Group 1 and Group 2) included in an emissions average. If a source requests approval to monitor a unique parameter or use a unique recordkeeping and reporting system, a rationale must be included in the Emissions Averaging Plan.

5. Notification of Compliance Status

The Notification of Compliance Status would be required 150 days after the source's compliance date. It contains the information for Group 1 emission points, back-end process operations using add-on control, and for all emission points in emissions averages, necessary to demonstrate that compliance has been achieved. Such information includes, but is not limited to, the results of any performance tests for continuous and/or batch process vents, and wastewater emission points; one complete test report for each test method used for a particular kind of emission point; TRE determinations for process vents; group determinations for batch process vents; design analyses for storage vessels and wastewater emission points; monitored parameter levels for each emission point and supporting data for the designated level; and values of all parameters used to calculate emission credits and debits for emissions averaging. The Notification of Compliance Status required by subpart H must be submitted within 90 days after the compliance date.

6. Periodic Reports

Generally, Periodic Reports would be submitted semiannually. However, there are two exceptions. First, quarterly reports must be submitted for all points included in an emissions average. Second, if monitoring results show that the parameter values for an emission point are above the maximum or below the minimum established levels for more than 1 percent of the operating time in a reporting period, or the monitoring system is out of service for more than 5 percent of the time, the regulatory authority may request that the owner or operator submit quarterly reports for that emission point. After 1 year, semiannual reporting can be resumed, unless the regulatory authority requests continuation of quarterly reports.

All Periodic Reports would include information required to be reported under the recordkeeping and reporting provisions for each emission point. For emission points involved in emissions averages, the report would include the results of the calculations of credits and debits for each month and for the quarter.

For continuously monitored parameters, the Periodic Report must report when ''excursions'' occur. Table 6 shows what constitutes an excursion. A significant difference exists between the proposed rule and the HON. In the HON, a source was allowed a certain number of ''excused'' excursions each semi-annual period before the source was determined to be out of compliance. In today's proposed rule, the owner or operator is out of compliance with the provisions of this subpart for each excursion.

Periodic Reports would also include results of any performance tests conducted during the reporting period and instances when required inspections revealed problems. Additional information the source is required to report under its operating permit or Implementation Plan would also be described in Periodic Reports.

Periodic Reports for subpart H must be submitted every 6 months, and must contain summary information on the leak detection and repair program, changes to the process unit, changes in monitoring frequency or monitoring alternatives, and/or initiation of a QIP.

7. Other Reports

Other reports required under the proposed rule include: Reports of startup, shutdown, and malfunction; process changes that change the

compliance status of process vents; and requests for extensions of the allowable repair period and notifications of inspections for storage vessels and wastewater.

TABLE 6.—SUMMARY OF EXCURSIONS

Emission source type	Type of excursion	Description of excursion
Continuous Front-End Process Vents.	Daily average exceedance.	When the daily average of a monitored parameter is above the maximum, or below the minimum, established level.
	Insufficient monitoring data.	Insufficient monitoring data is when an owner or operator fails to obtain a valid hour of data for at least 75 percent of the operating hours during an operating day. Four 15-minute parameter measurements must be obtained to constitute a valid hour of data.
Batch Front-End Process Vents.	Batch cycle daily average exceedance.	When the daily average of a monitored parameter is above the maximum, or below the minimum, established level.
	Insufficient monitoring data.	Insufficient monitoring data is when an owner or operator fails to obtain valid parameter measurements for at least 75 percent of the 15-minute periods during all controlled batch cycles during an operating day.
Back-End Process Operations compying by stripping/sampling.	Weekly weighted average.	When the weekly weighted average HAP content of polymers processed is above the level in the standard.
	Insufficient sampling data.	Insufficient sampling data is when an owner or operator fails to sample and/or analyze the residual HAP content for at least 75 percent of the times during the week when sampling is required.
Back-End Process Operations complying by stripping/stripper parameter monitoring.	Weekly weighted average.	When the weekly weighted average HAP content of polymers processed is above the level in the standard.
	Failure to sample	When a sample is not taken and analyzed in situations where a one hourly average stripper parameter value is not in accordance with the established parameter level.
	Insufficient stripper monitoring data.	Insufficient stripper monitoring data is when an owner or operator fails to obtain valid stripper monitoring data for at least 75 percent of grades or batches processing during the week. Stripper operating parameter measurements must be obtained for at least 75 percent of the 15-minute periods during the processing of a grade or batch to constitute valid stripper monitoring data.

In addition, quarterly reporting of the number of batch cycles accomplished for Group 2 batch process vents is required. Every fourth quarterly report would be required to include the total batch cycles accomplished during the previous 12 months, and a statement whether the owner or operator is in compliance with the batch cycle limitation.

V. Discussion of Major Issues

The Administrator welcomes comments from interested persons on any aspect of the proposed standards, and on any statement in the preamble or the referenced supporting documents. The proposed standards were developed on the basis of information available. The Administrator is specifically requesting factual information that may support either the approach taken in the proposed standards or an alternate approach. To receive proper consideration, documentation or data should be provided. Specifically, the EPA is requesting comment and data on the following issues.

As mentioned in section IV.A, the manufacture of some polymeric resins and copolymers is similar in some ways to the manufacture of the elastomers covered by today's proposed rule. The EPA does not intend for today's proposed regulation to cover the production of resins and copolymers, but recognizes that the relatively broad elastomer type definitions in today's proposed regulation could be interpreted to include some styrene butadiene resins and copolymers. The EPA considered distinctions based on several factors, including glass transition temperature, extent of conversion of monomers, process difference, vulcanizability, SIC Codes, and relative ratio of styrene and butadiene monomers, but discovered that each of these has limitations in its ability to accurately and clearly distinguish between elastomers and resins/copolymers. Therefore, the EPA is asking for comment on specific methods or criteria to distinguish between elastomers and resins/copolymers.

The proposed rule allows the monitoring of stripper parameters instead of the daily crumb/latex sampling and analysis. The EPA is request comments on the use of predictive computer modeling to monitor process parameters and predict emissions, instead of parameter monitoring or daily sampling and testing.

The back-end operations provisions in today's proposed regulation requires that samples of crumb rubber or latex be taken at the exit of the stripper, before any opportunity for emission of HAP to the atmosphere. The EPA is requesting comments on the technical feasibility and potential safety problems associated with these sampling requirements.

The EPA is also requesting comments on the format of the back-end provisions limiting the concentration of carbon disulfide in dryer vents at styrene butadiene rubber by emulsion production facilities. Industry representatives have made the EPA aware of other approaches that could be taken to reduce these carbon disulfide emissions, such as a limit on the amount of sulfur-containing shortstopping that could be used. The EPA is interested in comments on the appropriateness of the format for this section of the proposed rule, as well suggestions for alternative approaches.

In today's proposed rule, emissions averaging is only allowed among emission points associated with a single elastomer subcategory. There are instances where more than one subcategory is present at the same plant site. The EPA is interested in specific instances where emissions averaging between subcategories is beneficial and, more broadly, on the merits of allowing emissions averaging across

subcategories (or categories) at polymers and resins facilities where multiple subcategories are located. In addition, the EPA is interested in the implementation and legal ramifications of such cross-subcategory averaging.

Also, the EPA is specifically requesting comments on the application of the 20 emission point limit (25, if pollution prevention is used) on all elastomer affected sources located at a single plant site, for purposes of averaging in this proposed rule. The EPA is especially interested in specific situations where this limit will preclude known opportunities within real facilities to generate cost-effective credits. For these cases, the comments would be more useful if they address specifics on the emission and cost quantities computed, with detailed calculations and references.

Industry representatives have also mentioned to the EPA safety problems associated with the application of the subpart H requirements for open-ended valves or lines. The EPA is interested in comments on this issue.

VI. Summary of Environmental, Energy, Cost, and Economic Impacts

This section presents the air, non-air environmental (waste and solid waste), energy, cost, and economic impacts resulting from the control of HAP emissions under this rule.

A. Facilities Affected by These NESHAP

The proposed rule would affect BR, EPI, EPR, HYP, NEO, NBR, PBR, PSR, and SBR facilities that are major sources in themselves, or that are located at a major source. Based on available information, all of the facilities at which these elastomers are produced were judged to be major sources for the purpose of developing these standards. (Final determination of major source status occurs as part of the compliance determination process undertaken by each individual source.)

Impacts are presented relative to a baseline reflecting the level of control in the absence of the rule. The current level of control was well understood, because emissions and control data were collected on each facility included in the analysis. The impacts for existing sources were estimated by bringing each facility's control level up to today's proposed standards.

Impacts are presented relative to a baseline reflecting the level of control in the absence of the rule. The current level of control was well understood, because emissions and control data were collected on each facility included in the analysis. The impacts for existing sources were estimated by bringing each facility's control level up to today's proposed standards.

Impacts are not assessed for new sources because it was projected that no new sources are expected to begin operation through 1999. For more information on this projection, see the New Source Memo in the SID.

B. Primary Air Impacts

Today's proposed standards are estimated to reduce HAP emissions from all existing sources of listed elastomers by 6,400 Mg/yr. This represents a 48 percent reduction from baseline. Table 7 summarizes the HAP emission reductions for each individual subcategory.

C. Other Environmental Impacts

The total criteria air pollutant emissions resulting from process vent and wastewater control of today's proposed standards are estimated to be around 178 Mg/yr, with NO_X emissions from incinerators and boilers accounting for around 155 Mg/yr. Minimal wastewater or solid and hazardous waste impacts are projected.

TABLE 7.—HAP EMISSION REDUCTION BY SUBCATEGORY

Subcategory	HAP Emission Reduction (Mg/yr)						Percentage reduction from baseline
	Storage	Front-end process vents	Back-end process operations	Wastewater operations	Equipment leaks	Total	
Butyl rubber	0	211	0	102	293	606	64
Epichlorohydrin elastomer	4	0	0	0	120	124	77
Ethylene propylene rubber	2	85	979	0	1,020	2,087	62
Halobutyl rubber	64	38	0	0	233	335	26
Hypalon™	0	0	0	0	0	0	0
Neoprene	0	258	0	0	96	354	48
Nitrile butadiene latex	2	0	0	94	41	135	83
Nitrile butadiene rubber	0	0	0	0	364	364	62
Polybutadiene rubber/styrene butadiene rubber by solution	0	0	882	0	637	1,519	44
Polysulfide rubber	0	0	0	0	0	0	0
Styrene butadiene latex	0	22	0	272	332	627	44
Styrene butadiene rubber by emulsion	0	0	195	48	0	243	23
Total	71	615	2,056	516	3,136	6,393	48
Percent of total reduction	(1)	(12)	(31)	(7)	(48)	.....	.....

D. Energy Impacts

The total nationwide energy demands that would result from implementing the process vent and wastewater controls are around 1.10×10^{12} Btu annually.

E. Cost Impacts

Cost impacts include the capital costs of new control equipment, the cost of energy (supplemental fuel, steam, and electricity) required to operate control equipment, operation and maintenance costs, and the cost savings generated by reducing the loss of valuable product in the form of emissions. Also, cost impacts include the costs of monitoring, recordkeeping, and reporting associated with today's proposed standards. Average cost effectiveness ($/Mg of pollutant removed) is also presented as part of cost impacts and is determined by dividing the annual cost by the annual emission reduction. Table 8 summarizes the estimated capital and annual costs and average cost effectiveness by subcategory.

TABLE 8.—SUMMARY OF PROPOSED REGULATORY ALTERNATIVE COSTS

	TCI (1,000$)	TAC (1,000$/yr)	AER (Mg/yr)	CE ($/Mg)
Butyl	$691	$1,316	596	$2,200
Epichlorohydrin	491	241	124	1,900
Ethylene Propylene	5,957	3,732	2,087	1,800
Halobutyl	328	322	335	1,000
Hypalon®	.....	.....	.....	na
Neoprene	560	897	354	2,500
Nitrile Butadiene Latex	465	243	135	1,800
Nitrile Butadiene Rubber	397	444	365	1,200
Polybutadiene/Styrene Butadiene Rubber by Solution	11,780	8,335	1,519	[a] 5,500
Polysulfide	.....	.....	.....	na
Styrene Butadiene Latex	1,480	1,028	627	1,600
Styrene Butadiene Rubber by Emulsion	3,942	2,112	243	[a] 8,700

[a] This cost-effectiveness is primarily due to the high costs estimated to control back-end process emissions. The costs developed are costs for incineration devices to sufficient back-end vents so that emissions will be reduced to a level equivalent to the level achieved by meeting the residual HAP limit by stripping. Extrapolation of industry estimates of the cost of enhanced stripping place the cost of enhanced stripping as low as 10 percent of the cost of incineration.

Under the proposed rule, it is estimated that total capital costs for existing sources would be $26 million (1989 dollars), and total annual costs would by $18.7 million (1989 dollars) per year. It is expected that the actual compliance cost impacts of the proposed rule would be less than presented because of the potential to use common control devices, upgrade existing control devices, use other less expensive control technologies, implement pollution prevention technologies, or use emissions averaging. Because the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices could be utilized, it is not possible to quantify the amount by which actual compliance costs would be reduced.

F. Economic Impacts

Economic impacts for the regulatory alternatives analyzed show that the estimated price increases for the affected chemicals range from 0.2 percent for nitrile butadiene latex (NBL) to 2.5 percent for BR. Estimated decreases in production range from 0.7 percent for NBL to 5.0 percent for BR. No closures of facilities are expected as a result of the standard.

Three aspects of the analysis likely lead to an overestimate of the impacts. First, the economic analysis model assumes that all affected firms compete in a national market, though in reality some firms may be protected from competitors by regional or local trade barriers. Second, facilities with the highest control cost per unit of production are assumed to also have the highest baseline production costs per unit. This assumption may not always be true, because the baseline production cost per unit are not known, and thus, the estimated impacts, particularly for the smaller firms, may to too high. Finally, economic impacts may be overstated also because the alternative for halobutyl rubber and butyl rubber that was used in this analysis is more stringent and more costly than the selected regulatory alternative. For more information, consult the Basis and Purpose Document (see the Supplementary Information section near the beginning of the preamble).

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss today's proposed standard in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentation on today's proposed standards for BR, EPI, EPR, HYP, NEO, NBR, PBR, PSR, and SBR production should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–92–45.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process; and

(2) To serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A))).

C. Executive Order 12866

Under Executive Order 12866. (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, OMB has notified the EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to

OMB suggestions or recommendations will be documented in the public record.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875 we have involved State, local, and tribal Governments in the development of this rule. These governments are not directly impacted by the rule; i.e., they are not required to purchase control systems to meet the requirements of the rule. However, they will be required to implement the rule; e.g., incorporate the rule into permits and enforce the rule. They will collect permit fees that will be used to offset the resource burden of implementing the rule. Two representatives of the State governments have been members of the EPA Work Group developing the rule. The Work Group has met numerous times, and comments have been solicited from the Work Group members, including the State representatives; and their comments have been carefully considered in the rule development. In addition, all States are encouraged to comment on this proposed rule during the public comment period, and the EPA intends to fully consider these comments in the final rulemaking.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by the EPA, and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street SW. (2136), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 587 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, 2136, U. S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (or RFA, Public Law 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a final regulatory flexibility analysis must be prepared if a proposed regulation will have a significant economic impact on a substantial number of small entities. To determine whether a final RFA is required, a screening analysis, otherwise known as an initial RFA, is necessary.

Regulatory impacts are considered significant if:

(1) Annual compliance costs increase total costs of production by more than 5 percent, or

(2) Annual compliance costs as a percent of sales are at least 20 percent (percentage points) higher for small entities, or

(3) Capital cost of compliance represents a significant portion of capital available to small entities, or

(4) The requirements of the regulation are likely to result in closures of small entities.

A ''substantial number'' of small entities is generally considered to be more than 20 percent of the small entities in the affected industry.

Consistent with Small Business Administration (SBA) size standards, a resin producing firm is classified as a small entity if it has less than 1,000 employees, and is unaffiliated with a larger entity. Based upon this, 5 of the 18 firms affected are classified as small.

Data were not readily available to compare compliance costs to production costs (criterion 1) or to capital available to small firms (criterion 3), because the needed data were considered proprietary by those firms. Data were available to examine the remaining two criteria: the potential for closure, and a comparison of compliance costs as a percentage of sales.

No facilities are expected to close; therefore, the fourth criteria was not met. The final criteria was not met either, because the increase in annual compliance costs as a percentage of sales ranged from 0.04 percent to 1.11 percent, and therefore, the increases were not considered significant.

In conclusion, and pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. The basis for the certification is that the economic impacts for small entities do not meet or exceed the criteria in the Guidelines to the Regulatory Flexibility Act of 1980, as shown above. Further information on the initial RFA is available in the background information package (see **SUPPLEMENTARY INFORMATION** section near the beginning of this preamble).

G. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technical issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health and environmental risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 30, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–13924 Filed 6–9–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 63

[FRL–5217–5]

Methods for the Polymers and Resins I Rule; Appendix A, Test Methods 310, 312, 313

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Methods 310, 312, and 313 are being proposed in conjunction with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Manufacture of Major Elastomers, commonly referred to as the Polymers and Resins I Rule. The proposed methods were adapted from industrial methods submitted by the facilities in the polymers and resins industry and reviewed by the EPA. After consideration of public comments, the methods will be promulgated, in conjunction with the Polymers and Resins I rule, as EPA methods 310, 312, and 313, 40 CFR part 63, appendix A.

Method 310 is applicable for determining the residual amount of solvent (hexane being the most commonly used solvent) and diene monomer in ethylene-propylene terpolymer (EPDM) as produced in the solution polymerization process. Method 312 is applicable for determining the residual amount of styrene in styrene-butadiene rubber (SBR) as produced in the emulsion polymerization process. Method 313 is applicable for determining the residual amount of toluene, dimer, and styrene in polybutadiene rubber (PBR) and SBR crumb as produced in the solution polymerization process. All three-method analysis is through the use of gas chromatography.

DATES: *Comments.* Comments must be received on or before August 11, 1995.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by July 3, 1995, a public hearing will be held on July 12, 1995 beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Marguerite Thweatt at (919) 541–5607 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the EPA by July 3, 1995 by contacting Ms. Marguerite Thweatt, Organic Chemicals Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5607.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE–131), Attention: Docket No. A–92–44, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below. The public hearing, if required, will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

The docket is located at the above address in room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 4 p.m., Monday through Friday; telephone number (202) 382–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning the methods, contact Mr. Solomon Ricks at (919) 541–5242, Emission Measurement Center, Emission Monitoring and Analysis Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The proposed regulatory text of the proposed rule is not included in this **Federal Register** document. The regulatory text is available in Docket No. A–92–44; or a limited number of copies of the regulatory text are available from the EPA contact person designated in this document. This document with the proposed regulatory language is also available on the Technology Transfer Network (TTN) on the EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

Other materials related to this rulemaking are available for review in the docket.

I. Introduction

These methods will apply to ethylene-propylene elastomers production, polybutadiene rubber production, and styrene-butadiene rubber and latex production, using stripping technology as the method of compliance. As stated in the Polymers and Resins I rule, if compliance is to be demonstrated by sampling, samples of the stripped wet crumb or stripped latex must be taken immediately after the stripper and analyzed to determine the residual HAP content.

II. Summary of Proposed Methods

A. Method 310

The proposed method is adapted from a test method submitted to the EPA by the Exxon Chemical Company. The basic principle of the method is dissolving an EPDM crumb rubber sample in a polymer dissolving stock solution with an internal heptane standard. The solution is then analyzed for hexane and diene using a gas chromatograph (GC) with a flame ionization detector (FID). The solvent actually used in the production of the rubber is determined by the manufacturer. The particular solvent used by Exxon is hexane, therefore the proposed method is aimed towards the determination of residual hexane in the crumb rubber.

B. Method 312

The proposed method is adapted from a test method submitted to the EPA by the Goodyear Tire and Rubber Company. The basic principle of the method is coagulating the SBR latex sample with an internal standard and analyzing the extract to determine styrene concentration using a GC with a FID. The internal standard is prepared by mixing alpha-methylstyrene with either ethyl alcohol or isopropyl alcohol.

C. Method 313

The proposed method is adapted from a test method submitted to the EPA by the American Synthetic Rubber Corporation (ASRC). The basic principle of the method involves the use of a headspace analyzer in determining the residual amount of toluene, dimer, and styrene in PBR and SBR samples. As is the case with Method 310, the solvent used in the production of the rubber is determined by the manufacturer. ASRC uses toluene as its manufacturing solvent, therefore this proposed method highlights the determination of residual toluene as the solvent.

III. Adminstrative Requirements

A. Public Hearing

In accordance with section 307(d)(5) of the Clean Air Act as amended by Pub. L. 101–549, the Clean Air Act Amendments of 1990, a public hearing will be held, if requested, to discuss the proposed methods. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of the preamble in the Polymers and Resins I rule. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with the EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of the Polymers and Resins I rule.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, D.C.

B. Docket

The docket is an organized and complete file for all information submitted or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) (Clean Air Act section 307(d)(7)(A)).

C. Office of Management and Budget Review

Under Executive Order 12866 (58 FR 51735 October 4, 1993)), the EPA is required to judge whether a regulation is ''significant'' and therefore subject to Office of Management and Budget

(OMB) review and the requirements of this Executive Order to prepare a regulatory impact analysis (RIA). The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

D. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (RFA) of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The RFA specifically requires the completion of an analysis in those instances where small business impacts are possible. This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. Because this rulemaking imposes no adverse economic impacts, an analysis has not been conducted.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant impact on a substantial number of small entities because no additional cost will be incurred by such entities.

E. Paperwork Reduction Act

The rule does not change any information collection requirements subject of Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for significantly or uniquely impacted by the rule.

EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

G. Statutory Authority

The statutory authority for this proposal is provided by section 112 of the Clean Air Act, as amended, 42 U.S.C., 7412.

Dated: May 30, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–13923 Filed 6–9–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–75, RM–8615]

Radio Broadcasting Services; Blossom, TX, and DeQueen, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Red River Wireless Communications proposing the allotment of Channel 224C2 to Blossom, Texas, as the community's first local aural transmission service. In order to accommodate the allotment of Channel 224C2 to Blossom, we also propose to substitute Channel 227A for Channel 224A at DeQueen, Arkansas, and to modify the license of Station KDQN(FM) accordingly. The licensees of Station KDQN(FM), DeQueen, Arkansas, has been ordered to show cause as to why their license should not be modified as described above. *See* Supplemental Information, *infra*.

DATES: Comments must be filed on or before July 28, 1995, and reply comments on or before August 14, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Pennington, III, 5519 Rockingham Road-East, Greensboro, North Carolina 27407 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–75, adopted May 25, 1995, and released June 6, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Channel 224C2 and Channel 227A can be allotted to Blossom, Texas, and DeQueen, Arkansas, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 224C2 can be allotted to Blossom with a site restriction of 11.0 kilometers (6.8 miles) east in order to avoid a short-spacing conflict with a pending proposal to allot Channel 225A at Bells, Texas. The coordinates for Channel 224C2 at Blossom are 33–40–07 and 95–16–13. Channel 227A can be allotted to DeQueen, Arkansas, and can be used at Station KDQN(FM)'s licensed site. The coordinates for Channel 227A at DeQueen are 34–01–57 and 94–19–43.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–14275 Filed 6–9–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80–9; Notice 11]

RIN 2127–AF59

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes that the rear of truck tractors be equipped with retroreflective sheeting similar to that required for the rear of heavy trailers. The agency tentatively concludes that the addition of such a conspicuity treatment would result in a reduction of deaths, injuries, and property costs.

DATES: Comments are due September 11, 1995. The amendments would be effective 120 days after publication of the final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking, NHTSA (202–366–6346).

SUPPLEMENTARY INFORMATION:

Background

On December 10, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to add paragraph S5.7 *Conspicuity Systems*. (57 FR 58406). The rule has required, effective December 1, 1993, that large trailers, particularly the type that is hauled by truck tractors, be provided with reflective marking (either retroreflective tape or reflex reflectors) to enhance their detectability at night or under other conditions of reduced visibility. The preamble to the rule explained that the conspicuity requirements applied only to large trailers because most fatal accidents at night in which a truck is struck involves a truck tractor-trailer combination vehicle. But the notice also mentioned that the night accident involvement rate of truck tractors alone was much greater than that of other single unit trucks. The agency announced that it was considering truck tractors for future conspicuity rulemaking.

As part of its petition for reconsideration of the final rule, the Insurance Institute for Highway Safety (IIHS) asked that the conspicuity requirement be extended to single unit trucks and to truck tractors, citing accident statistics in support of its request.

NHTSA has tentatively concluded that motor vehicle safety would be enhanced if a conspicuity marking scheme were extended to truck tractors. Under 49 CFR 571.3(b), a truck tractor ''means a truck designed primarily for drawing other motor vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and the load so drawn.'' Far fewer crashes involve vehicles colliding with the rear of truck tractors than with the rear of trailers, presumably because of a much lower exposure of tractors operating without trailers. However, NHTSA's data indicate that a higher proportion of rear end crashes involving truck tractors, including fatal crashes, occur at night than for either trailers or trucks.

It is obvious that truck tractors are less conspicuous at night from the rear than other motor vehicles. They are subject to fewer rear lighting requirements of Standard No. 108. Unlike other vehicles over 80 inches wide, tractors are not required to have rear side marker lamps, rear clearance lamps, or rear identification lamps. If double sided turn signal lamps are used on the front fenders, truck tractors are not required to have rear turn signal lamps either.

The only remaining rear marking lamps are the taillamps. These are usually mounted closer together on truck tractors than the taillamps are on other motor vehicles. Ongoing research at UMTRI concerning the relative placement of lower beam and upper beam headlamps demonstrates that the distance perception of motorists is distorted when viewing a vehicle with narrow lamp spacing. The taillamps on truck tractors are generally spaced closer together than the headlamps in UMTRI's study, and may have more influence on driving errors.

Since much of a truck tractor's operational life is spent in hauling trailers, it does not appear cost beneficial to require it to have the full panoply of rear lighting equipment required for other motor vehicles. Further, the configuration of truck tractors presents practicability problems for the mounting of the tail, stop, and turn signal lamps at the locations specified for other vehicles. However, the inexpensive and convenient use of retroreflective material would improve the detectability of the rear of truck tractors when they are being operated or parked without trailers. The familiarity of the public with the Federal conspicuity treatment applied to large trailers should improve the recognition of similarly treated truck tractors and make such a treatment more effective for accident prevention than it would have been in the past.

Proposed Conspicuity Treatment for Rear of Tractor Trailers

In view of the relatively short length of truck tractors and the fact that they are equipped with a full complement of lamps at the front, NHTSA is proposing a conspicuity treatment for the rear only. Retroreflective material would be applied in locations not obscured by vehicle equipment in a rear orthogonal view. As with large trailers, two strips of white material 300 mm in length would be applied horizontally and vertically to the right and left upper contours of the body, as close to the top of the body and as far apart as practicable. As with the presently existing restriction for red reflex reflectors on truck tractors (paragraph S5.3.1.2), the strips on the cab rear would be mounted not less than 100 mm above the height of the rear tires. Relocation of the material would be allowed to avoid obscuration by vehicle equipment. If relocation is required for one side of the body but not the other, the manufacturer may relocate the other strips to achieve a symmetrical effect.

To indicate the overall width of the truck tractor, two strips of retroreflective sheeting, 600 mm in length, of alternating colors of red and white would also be required on the rear, to be mounted as horizontal as practicable and as far apart as practicable, not more than 1525 mm above the road surface. This sheeting could be applied to the truck body, or, if the tractor is so equipped, to the mud flaps or mud flap support brackets. However, if the strips are located on the mud flaps, they must be placed not lower than 300 mm below the mud flap support bracket to avoid excessive movement. Since the tire diameter, and consequently the distance from the mud flap support to the road surface, is nominally 1 meter, the lowest practicable location of the strips is about 700 mm above the road surface.

Under the proposal, manufacturers of truck tractors would have the option of using an array of reflex reflectors on the rear instead of retroreflective sheeting, the same option that is available to trailer manufacturers. However, reflex reflectors would still be required by Table I of Standard No. 108, in addition to the conspicuity material, whether sheeting or reflectors, because

paragraphs S5.1.1.1 and S5.1.1.2 of Standard No. 108 excuse truck tractors from the full complement of rear lighting equipment required of trucks.

Presently, mounting of conspicuity material or reflectors on mud flaps is prohibited by section S5.3.1. This requires lighting equipment to be ''securely mounted on a rigid part of the vehicle other than glazing that is not designed to be removed except for repair''. In the past, NHTSA has deemed mudflaps not to be a ''rigid part of the vehicle.'' However, the prohibition is subject to exceptions ''in succeeding paragraphs of S5.3.1 and S7'', and NHTSA proposes adding as exceptions tape or reflectors on mudflaps added in compliance with S5.7.

Estimate of Benefits

The benefits estimated for the trailer conspicuity regulation offer a reasonable basis for estimating the benefits of a similar regulation for truck tractors. The agency concluded that the likely result of adding conspicuity treatment to trailers was the prevention of 25 percent of rear collisions, and a significant reduction in the severity of the remaining collisions. Although the required rear lighting for truck tractors is less than is required for a trailer, NHTSA believes that the added degree of conspicuity of a tractor that would be provided by retroreflective sheeting is not less than the relative improvement in conspicuity of a trailer provided by its treatment. Thus, it is reasonable to assume a similar rate of crash prevention.

NHTSA estimated that the property damage savings of preventing a crash into the rear end of a trailer, in 1992 dollars, as $10,869, and, for damage mitigation, as $2,075 (in 1994 dollars, $11,434 and $2,183 respectively). The agency believes that, when the entire truck tractor population is equipped with conspicuity treatment, on an annual basis 276 collisions can be prevented, resulting in a savings of $3,156,000, and that 829 collisions can be mitigated, resulting in a savings of $1,800,000, or total property damage benefits of $4,966,000. If no benefits were presumed for any vehicle older than 15 years, the remaining property damage benefits would be $4,755,000. The present value of these future benefits of a model year fleet would range from $4,313,000 to $3,115,000 under discount rate assumptions of 2 percent to 10 percent.

However, the primary purposes of a tractor conspicuity regulation would be to save lives and reduce the severity of injuries. If fatalities involving rear collisions of truck tractors can be reduced by 15 to 25 percent, there would be 4 to 8 fewer deaths attributable to this type of accident. The agency also believes that there would be 107 to 178 fewer injuries when full coverage of the tractor population is achieved.

Estimate of Costs

In estimating costs, NHTSA has used a price for retroreflective material of $0.675 a linear foot, although market pressures may have reduced the cost to $0.60 for high volume users. Approximately 8 linear feet of material (7.8 feet actually) would be required to comply. NHTSA is also estimating a labor rate of $22.50 an hour, and an installation time of 10 minutes for the material.

On this basis, NHTSA estimates a manufacturer's cost of $9.15 to apply conspicuity treatment to the tractor body, and a consumer cost of $13.82, applying a consumer cost factor of 1.51. If the manufacturer chooses to apply the treatment to mud flaps, two mounting plates would be required, at an additional cost to the manufacturer of $1.11 each, or $2.22, a total cost to the consumer of $3.35. Thus, the cost to the manufacturer would range between $9.15 and $11.37, and to the consumer, between $12.31 and $17.17. Using this latter figure, and estimating an annual production of 150,000 for truck tractors, the agency estimated that the total annual cost impact of this regulation would not exceed $2,575,500. The present value of future property damage reduction benefits from this regulation in property damage alone are expected to be at least $3,115,000 with a discount rate of 10 percent and more if a lower discount rate prevails. The prevention of deaths and injuries would be achieved with no additional cost.

Request for 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.

Effective Date

NHTSA estimates that a final rule would become effective around January 1, 1997, but intends that the actual date will be the first day of the first month beginning following 120 days after publication of the final rule in the **Federal Register**. Because compliance with the final rule can be achieved by simple application of retroreflective sheeting, which does not require any structural modifications or changes in tooling, and because of the importance of reducing deaths, injuries, and property damage at the earliest feasible time, the agency tentatively finds for good cause shown that an effective date for the amendments to Standard No. 108 that is earlier than 180 days after their issuance would be in the public interest.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This action has not been reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. Implementation of the rule would not

have a yearly cost impact that exceeds $2,500,000 in the aggregate. Although these cost impacts are not deemed significant and preparation of a full regulatory evaluation is not warranted, the agency has prepared a preliminary regulatory evaluation which has been placed in the docket.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that a final rule based on this proposal would have a significant effect upon the environment. Compliance would require the application of not more than 8 feet of retroreflective tape to the rear (1,200,000 feet for an estimated year's production of 150,000 truck tractors), a material currently in use with no known negative environmental effects.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would not be significantly affected because the price of new truck tractors would be only minimally increased. An increase of less than $16 per vehicle is expected to be more than offset by savings in repair to it over its life.

Executive Order 12612 (Federalism)

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

Civil Justice

A final rule based on this proposal would not have any retroactive effect. Under 49 U.S.C. 30103, 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. Section 30163 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.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

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

Authority: 49 U.S.C. 322, 30111, 30115, 30162; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 would be amended by:

(a) revising paragraphs S5.3.1, S5.7, S5.7.1, S5.7.1.3(a), S5.7.1.4 (a) and (b), and the headings of S5.7.1.4.1 and S5.7.1.4.2,

(b) adding new paragraph S5.7.1.4.3,

(c) revising paragraphs S5.7.2 and S5.7.3, and

(d) adding Figure 31, to read as follows:

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, reflective devices, and associated equipment.

* * * * *

S5.3.1 Except as provided in succeeding paragraphs of S5.3.1, and paragraphs S5.7 and S7, each lamp, reflective device, and item of associated equipment shall be securely mounted on a rigid part of the vehicle other than glazing that is not designed to be removed except for repair, in accordance with the requirements of Table I and Table III, as applicable, and in the location specified in Table II (multipurpose passenger vehicles, trucks, trailers, and buses 80 or more inches in overall width) or Table IV (all passenger cars, and motorcycles, and multi-purpose passenger vehicles, truck, trailers and buses less than 80 inches in overall width), as applicable.

* * * * *

S5.7 *Conspicuity Systems.* Each trailer of 80 or more inches overall width, and with a GVWR over 10,000 lbs., manufactured on or after December 1, 1993, except a trailer designed exclusively for living or office use, and each truck tractor manufactured on or after _____ 1, 199x, shall be equipped with either retroreflective sheeting that meets the requirements of S5.7.1, reflex reflectors that meet the requirements of S5.7.2, or a combination of retroreflective sheeting that meet the requirement of S5.7.3.

S5.7.1 *Retroreflective sheeting.* Each trailer or truck tractor to which S5.7 applies that does not conform to S5.7.2 or S5.7.3 shall be equipped with retroreflective sheeting that conforms to the requirements specified in S5.7.1.1 through S5.7.1.5.

* * * * *

S5.7.1.3 *Sheeting pattern, dimensions, and relative coefficients of retroreflection.*

(a) Retroreflective sheeting shall be applied in a pattern of alternating white and red color segments to the side and rear of each trailer, and the rear of each truck tractor, and in white to the upper rear corners of each trailer and truck tractor, in the locations specified in S5.7.1.4, and Figures 30–1 through 30–4, and Figure 31, as appropriate.

* * * * *

S5.7.1.4 *Location.* (a) Retroreflective sheeting shall be applied to each trailer and truck tractor as specified below, but need not be applied to discontinuous surfaces such as outside ribs, stake post pickets on platform trailers, and external protruding beams, or to items of equipment such as door hinges and lamp bodies.

(b) The edge of white sheeting shall be not be located closer than 75 mm to the edge of the luminous lens area of any red or amber lamp that is required by this standard.

* * * * *

S5.7.1.4.1 *Rear of trailers.* * * *

S5.7.1.4.2 *Side of trailers.* * * *

S5.7.1.4.3 *Rear of truck tractors.* Retroreflective sheeting shall be applied to the rear of each truck tractor as follows, in locations not obscured by vehicle equipment as determined in a rear orthogonal view:

(a) Element 1: Two strips of sheeting in alternating colors, each not less than 600 mm long, located as close as practicable to the edges of the truck cab, or the mud flaps, or the mud flap support brackets, to mark the width of the truck tractor. The strips shall be mounted as horizontal as practicable, and as close as practicable to not less than 375 mm and not more than 1525 mm above the road surface at the stripe centerline. Strips on mud flaps shall be mounted not lower than 300 mm below the lower edge of the mud flap support bracket. Strips on the truck cab shall be mounted not less than 100 mm above the height of the rear tires.

(b) Element 2: Two pairs of white strips of sheeting, each pair consisting of strips 300 mm long, applied horizontally and vertically to the right and left upper contours of the body, as

close to the top of the body and as far apart as practicable. If one pair must be relocated to avoid obscuration by vehicle equipment, the other pair may be relocated in order to be mounted symmetrically.

S5.7.2 *Reflex Reflectors.* Each trailer or truck tractor to which S5.7 applies that does not conform to S5.7.1 or S5.7.3 shall be equipped with reflex reflectors in accordance with this section.

* * * * *

S5.7.3 *Combination of sheeting and reflectors.* Each trailer or truck tractor to which S5.7 applies that does not conform to S5.7.1 or S5.7.2, shall be equipped with retroreflective materials that meet the requirements of S5.7.1 except that reflex reflectors that meet the requirements of S5.7.2.1, and that are installed in accordance with S5.7.2.2, may be used instead of any corresponding element of retroreflective sheeting located as required by S5.7.1.4.

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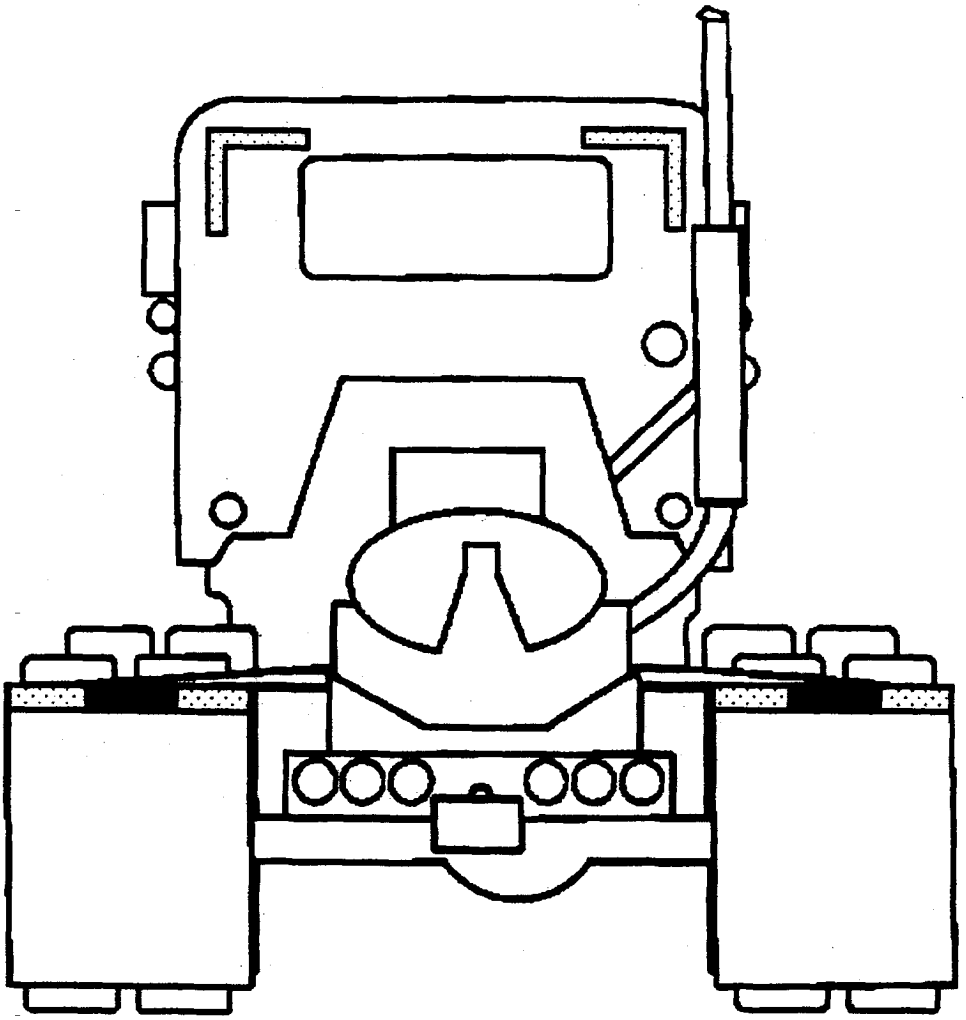

Figure 31 - Truck Tractor Conspicuity Treatment Example

Issued on May 23, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–14246 Filed 6–9–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Recycled Petition Finding for a Petition To List the Bull Trout as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month recycled petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month recycled petition finding for a petition to list the bull trout (*Salvelinus confluentus*) under the Endangered Species Act of 1973, as amended. The Service finds that sufficient information is available on the biological vulnerability and threats to the species to support a warranted finding to list bull trout as a distinct population segment within the conterminous United States. After review of all available scientific and commercial information, the Service finds that listing this species is warranted, but precluded due to other higher priority listing actions. The Service continues to seek data and comments from the public on the status and threats to this species.

DATES: The finding announced in this document was made on May 31, 1995. Comments and information may be submitted until further notice.

ADDRESSES: Data, information, comments, or questions concerning this finding should be submitted to the Idaho State Supervisor, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho, 83705. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Idaho State Supervisor (see **ADDRESSES** section), at 208/334–1931.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B)(iii) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that the Service may make ''warranted but precluded'' findings on petitions to revise the Lists of Endangered and Threatened Wildlife and Plants if an immediate proposed rule is precluded by other pending proposals. Section 4(b)(3)(C)(i) of Act requires that any petition for which a 12-month finding of ''warranted but precluded'' is made should be treated as if it was resubmitted on the date such finding was made. As a result, the Service must make one of the findings described in section 4(b)(3)(B) within 12 months of the most recent ''warranted but precluded'' finding (50 CFR 424.14(b)(4)). On June 10, 1994 the Service published a notice of petition finding (59 FR 30254) that determined listing a distinct vertebrate population segment of bull trout (*Salvelinus confluentus*) residing in the conterminous United States is ''warranted, but precluded'' due to other higher priority listing actions. This finding was made on a petition received October 30, 1992 from the Alliance for the Wild Rockies, Inc., Friends of the Wild Swan, and Swan View Coalition requesting that the bull trout be listed as an endangered species throughout its range. The Service determined that the threats facing the bull trout were imminent but of moderate magnitude. Therefore, in accordance with the Service's listing priority system (48 FR 43098), the listing priority number assigned to this population was 9.

Following the June 10, 1994 ''warranted but precluded'' finding (59 FR 30254), the Service solicited and continued to evaluate new information regarding the status of bull trout, as well as information pertinent to the present and future threats facing the species. In January 1995, the Service reevaluated the listing priority for the bull trout in the conterminous United States. At this time, there was uncertainty over the status of pending State and Federal actions, such as PACFISH and a new emphasis on timber harvest proposals in areas damaged by fires and insects. Following this reevaluation, the Service concluded that threats previously considered moderate in several watersheds were now of high magnitude and that the majority of the populations were subject to imminent threats of high magnitude. On January 31, 1995, the service elevated the listing priority for the species from 9 to 3.

In evaluating the current status of the bull trout to make the required annual recycled petition finding, information received from a variety of agency and private sources has been fully considered. The Service has carefully assessed the best scientific and commercial information available and has determined that sufficient information exists on the biological vulnerability and threats to the species to continue to support a warranted finding to list bull trout within the conterminous United States. While some of the remaining bull trout populations appear to be stable, all populations with one exception face one or more threats that may result in their future decline.

In conjunction with the determination that listing the bull trout within the conterminous United States was warranted, the Service evaluated the magnitude and imminence of threats faced by bull trout populations in over 60 watersheds in the course of assigning a priority for listing. While watersheds may contain several populations, the Service used watersheds as the evaluation units because in most cases threats in a watershed apply to all populations.

Actions recently taken at both the Federal and State levels are beginning to reverse the long-term decline of bull trout. The Forest Service and Bureau of Land Management, by implementing the President's Forest Management Plan, PACFISH, the Inland Native Fish Strategy and the Eastside Columbia Basin Environmental Impact Statements' recommendations, have initiated activities that will reduce the magnitude of threats to bull trout. In addition, the States of Idaho, Montana, Oregon, and Washington, through their development of bull troup protection agreements, are setting in place activities that will assist the recovery of the bull trout. The Service believes that these activities provide conservation actions and management strategies that will recover and sustain populations of the bull trout.

Based on an evaluation of the bull trout's status in the known watersheds of occurrence and actions undertaken by Federal agencies and the States, the Service's evaluation has determined that the majority of bull trout populations within the conterminous United States faces imminent threats of moderate magnitude. Therefore, bull trout populations residing within the conterminous United States have been assigned a listing priority number of 9.

Recently enacted legislation (P.L. 104–6) imposed a listing moratium of the remainder of Fiscal Year 1995, and rescinded $1.5 million from the Service's Fiscal Year 1995 listing funds. In response to this legislation, the Service will focus its limited resources on category 1 species, especially those with listing priority numbers of 2 or 3. Therefore, a listing proposal for bull trout in the conterminous United States remains ''warranted but precluded.''

Section 4(b)(3)(B)(iii) of the Act provides that the Service may make ''warranted but precluded'' findings only if it can demonstrate that expeditious progress is being made on other listing actions. Since October 1, 1993, the Service has proposed the

listing of 118 species and finalized the listing of 182 species. The Service believes this demonstrates expeditious progress on other listings.

References Cited

A complete list of references used in the preparation of this finding is available, upon request, from the Idaho State Office (see **ADDRESSES** section).

Author. The primary authors of this document are Patricia Klahr and Steve Duke (see **ADDRESSES** section); Bob Hallock, Northern Idaho Office, 11103 East Montgomery Drive, Suite 2, Spokane, WA; Lori Nordstrom, Helena Field Office, P.O. Box 10023, Helena, MT; Shelley Spalding, Washington State Office, 3704 Griffin Lane SE, Suite 102, Olympia, WA.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

Dated: June 6, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–14284 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Plant Lathyrus grimesii (Grimes vetchling) as Endangered in Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list *Lathyrus grimesii* (Grimes vetchling) as an endangered species under the emergency provisions of the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information concerning the status of the species, the Service finds that listing *Lathyrus grimesii* is not warranted.

DATES: The finding announced in this document was made on May 2, 1995.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 4600 Kietzke Lane, Building C–125, Reno, Nevada 89502. The petition, findings, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Janet Bair, staff biologist, at the above address, or telephone 702–784–5227.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals. Such 12-month findings are to be published in the **Federal Register.**

On May 19, 1993, the Service received a petition dated May 10, 1993, to emergency list the plant *Lathyrus grimesii* (Grimes vetchling) as an endangered species. The Service's finding that substantial information existed indicating the petitioned action may be warranted, was published in the **Federal Register** on July 11, 1994 (59 FR 35304). A status review was initiated at that time.

Lathyrus grimesii, a member of the pea family (Fabaceae), is a perennial herb known only from the Independence Mountains and vicinity in Elko County, Nevada. At the time the petition was submitted to the Service, the total distribution of *Lathyrus grimesii* was believed to be restricted to three or four small populations located within an area smaller than 2 square kilometers (approximately 1 square mile) in the Dorsey Creek drainage of the Independence Mountains. All but one of these populations were located in the immediate vicinity of an area proposed for gold mine exploration.

Based on these data, the petition and supporting information suggested all known populations of *Lathyrus grimesii* were likely to be affected by gold exploration or mine development. However, the Forest Service, in conjunction with other agencies and concerned entities, modified the project so as to avoid all direct and most indirect impacts to the *Lathyrus grimesii* populations. In December 1993 the Service was notified that minerals exploration in this area was not successful and no further exploration was planned.

Data collected by Humboldt National Forest, Independence Mining Company, Inc., and Nevada Natural Heritage Program during the summers of 1993 and 1994 indicates that *Lathyrus grimesii* is more abundant than previously believed. Aerial and ground field surveys resulted in identification of 67 total populations of *Lathyrus grimesii,* located in nine separate drainages in the Independence Mountains. These populations collectively cover approximately 150 to 200 hectares (400 to 500 acres), distributed over an area of about 130 square kilometers (50 square miles) (James Morefield, Nevada Natural Heritage Program, *in litt.* 1994). In addition, a separate population occurs on Wilson Peak in the neighboring Bull Run Mountains. Approximately 30 percent of the known populations occur on private lands, while approximately 70 percent occur on lands under Forest Service management. A very small proportion of the known populations (approximately 1 percent) occur on lands managed by the Bureau of Land Management in the Bull Run Mountains.

The existence of disseminated gold has resulted in mine claims throughout the Independence Mountains as well as exploration projects and mine development in several areas. The recently discovered populations of *Lathyrus grimesii* occur on lands with high mineral potential (Dean Morgan, Humboldt NF, Mountain City Ranger District, *in litt.* 1994). However, while mine claims have been established in this area, exploration has not occurred. The few roads into the area are located primarily on private inholdings. Any extensive exploration of this area will require building new roads or agreements with the private landowners for access. Humboldt National Forest has not received any new proposals for mine exploration, development, or associated activities in areas populated by *Lathyrus grimesii.*

Livestock grazing is presently a dominant land use in the vicinity of the recently discovered populations. Grazing effects were noted as moderate to severe at some sites in 1994, and cattle were observed grazing on the dried stems of *Lathyrus grimesii* within one population (James Morefield, *in litt.* 1994). Grazing of green stems during flowering and fruiting has not been observed. Humboldt National Forest has notified ranchers of the presence of *Lathyrus grimesii* and advised them to minimize livestock movements through the populations (Jim Nelson, Humboldt NF, *in litt.,* 1994).

The petition indicated that *Lathyrus grimesii* qualified for listing, in part, because of the inadequacy of existing regulatory mechanisms. In April 1994, *Lathyrus grimesii* was added to the Forest Service's Intermountain Region's

list of sensitive plants. The Forest Service has authority to develop and implement management practices to insure sensitive species do not become threatened or endangered because of Forest Service actions. The Forest Service also has authority to require that new project proposals in or near *Lathyrus grimesii* populations on Forest Service lands contain mitigation measures to insure population stability. Since the petition was received by the Fish and Wildlife Service, Humboldt National Forest has initiated various conservation activities involving *Lathyrus grimesii*, including population monitoring and seed collection. They have also expressed willingness to develop and implement a conservation agreement and strategy for *Lathyrus grimesii* (Jim Nelson, *in litt.* 1994). The species currently receives no protection by the State of Nevada, therefore, no regulatory mechanisms are in place to protect its populations or habitats on private lands. Major threats to populations located on private lands have not been identified.

Prior to the discovery of new populations of *Lathyrus grimesii*, the limited distribution of the species in the Dorsey Creek drainage and its occurrence on steep, unstable slopes indicated the species was vulnerable to stochastic extinction through natural or human-induced catastrophic events such as landslides and erosion. Recent discoveries of the species in multiple drainages indicates that stochastic extinction is unlikely.

The presence of exotic weeds within populations of *Lathyrus grimesii* may pose a threat to individual populations, but currently do not pose a threat to the continued existence of the species. The noxious *Euphorbia esula* (weed leafy spurge) was discovered in one *Lathyrus grimesii* population in the Deep Creek drainage, and *Bromus tectorum* (cheatgrass) was present in at least half of the populations surveyed in 1994. Presence of noxious weeds in these areas may be attributable to poor range condition.

After review of all scientific and commercial information available on *Lathyrus grimesii*, the Service has determined that listing *Lathyrus grimesii* is not warranted at this time. This decision is based on information contained in the petition and otherwise available to the Service at the time the 12-month finding was made. The Service recognizes that additional information on biology, threats to populations and habitats, and future conservation actions is necessary to keep track of the species' status. *Lathyrus grimesii* is, thus, retained in category 2 candidate status until sufficient information becomes available to base a decision on whether to retain or delete the species from the list of candidates. If additional data become available in the future, the Service may reassess the need for listing.

Author. The primary author of this document is Janet Bair (see **ADDRESSES** section above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 2, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–14357 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Oahu Elepaio From the Island of Oahu, Hawaii, With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to add the Oahu elepaio (*Chasiempis sandwichensis gayi*) to the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973 as amended. The Service finds that the petition presents substantial information indicating that listing this species may be warranted. A status review is initiated and a 12-month finding will be prepared. In addition, the Service is requesting comments on the petition to designate critical habitat for the species.

DATES: The finding announced in this document was made on May 23, 1995. Information and comments concerning this petition finding must be submitted by August 11, 1995 to be considered in the status review of this species.

ADDRESSES: Send comments and materials concerning this petition to Robert P. Smith, Ecoregion Manager, Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. The petition finding, supporting data, comments, and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith (see **ADDRESSES** section) (808–541–2749).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973 as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding is to be based on the best scientific and commercial information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the Service finds that a petition presents substantial information indicating that a requested action may be warranted, then the Service initiates a status review on that species, which results in a finding that the petitioned action is unwarranted, warranted, or warranted but precluded due to pending proposals to list other species. In addition, upon receiving a petition to designate critical habitat the Service is to promptly conduct a review in accordance with the Administrative Procedure Act and applicable Department of Interior regulations.

The Service has made a 90-day finding on a petition to list Oahu elepaio (*Chasiempis sandwichensis gayi*). On March 22, 1994, the Service received a petition dated March 21, 1994, from Mr. Vaughn Sherwood of Honolulu, Hawaii, to list the Oahu elepaio (*Chasiempis sandwichensis gayi*) as an endangered or threatened species with critical habitat. The Oahu elepaio is an endemic subspecies in the family *Muscicapidae* (Old world flycatchers) found only on the island of Oahu, Hawaii (Berger 1981, Pratt *et al.* 1987). Threats to the species include habitat degradation and exotic diseases, predators, and competitors.

The Service has reviewed the petition, literature cited in the petition, other available literature and information, and consulted with biologists familiar with the Oahu elepaio. On the basis of the best scientific and commercial information available, the Service finds the petition presents substantial information that listing this taxon may be warranted. This finding is based upon the following information:

1. Present and threatened destruction, modification, and curtailment of habitat is caused by highway construction projects, the activities of introduced alien pigs, and the spread of introduced alien weeds (Ellis *et al.* 1993, Sherwood 1993).

2. Diseases such as avian malaria and avian pox are thought to have contributed to the decline of this taxon (Ellis *et al.* 1993). Mosquitoes carrying alien diseases are now found throughout the entire range of the Oahu elepaio.

3. Inadequacy of existing regulatory mechanisms to prevent continued loss of habitat associated with highway construction projects. This taxon currently receives no protection from federal or state activities which adversely affect its habitat.

4. Other factors, including the relatively low number of individuals (ca. 200–500 birds) places this subspecies at risk of extinction due to inbreeding, stochastic events, and catastrophes (Ellis *et al.* 1993).

More detailed information may be obtained from the Service's Pacific Islands Ecoregion. The Service is requesting comments on the petition to designate critical habitat for this species. Interested persons or parties are invited to submit data, information, and comments on the Oahu elepaio (see **ADDRESSES** section above).

References Cited

Berger, A.J. 1981. Hawaiian Birdlife. Second Edition. University of Hawaii Press, Honolulu. 260 pp.

Ellis, S., C. Kuehler, R. Lacy, K. Hughes, and U.S. Seal. 1993. Hawaiian Forest Birds Conservation Assessment and Management Plan. Captive Breeding Specialist Group.

Pratt, H.D., P.L. Bruner, and D.G. Berrett. 1987. The birds of Hawaii and the Tropical Pacific. Princeton University Press, Princeton. 409 pp.

Sherwood, V. 1993. The Oahu 'elepaio (*Chasiempis sandwichensis gayi*): population histories and habitat: island of Oahu, Hawaii. Honors Thesis, University of Hawaii, Manoa. 110 pp.

Author. The author of this document is Dr. Loyal A. Mehrhoff, Ecological Services, Pacific Islands Ecoregion, (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 23, 1995.

Bruce Blanchard,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 95–14249 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Grass Lake/Green Cove Creek Population of the Olympic Mudminnow as Endangered and To Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the Grass Lake/Green Cover Creek population of the Olympic mudminnow (*Novumbra hubbsi*) under the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial scientific or commercial information indicating that listing this population may be warranted. The Service concludes that the Olympic mudminnows occupying the Grass Lake/Green Cove Creek drainage do not constitute a distinct population segment.

DATES: The finding announced in this document was made on May 23, 1995.

ADDRESSES: Data, information comments, or questions concerning this petition should be submitted to the State Supervisor, U.S. Fish and Wildlife Service, Ecological Services Office, 3704 Griffin Lane SE., Suite 102, Olympia, Washington 98501–2192. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David C. Frederick, Field Office Supervisor, see **ADDRESSES** section above or telephone 206–753–9440.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be waranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service also is required to commence a review of the status of the species involved if one has not already been initiated under the Service's internal candidate assessment process.

The Service has made a finding on a petition to list the Grass Lake/Green Cover Creek population of the Olympic mudminnow (*Novumbra hubbsi*). The petition, dated September 15, 1994, was submitted by Theodore A. Mahr, attorney representing the ''Save Allison Springs'' Citizens Committee, and several members of the ''Save Allison Springs'' Citizens Committee. The ''Save Allison Springs'' Citizens Committee is located in Olympia, Washington. The petition requests the Service to list the Grass Lake/Green Cove Creek population of the Olympic mudminnow as an endangered species and to simultaneously designate critical habitat for the population. The petitioner stated that the Olympic mudminnow in the Grass Lake/Green Cover Creek Basin may be an evolutionarily significant unit due to the apparent geographic isolation of this population; that this population may be imperiled by present and proposed housing developments in the Green Cove Creek Basin; and that existing regulatory mechanisms may not be adequate to protect this population.

The Service has reviewed the petition, the literature cited in the petition, and other information available in the Service's files. On the basis of the best scientific and commercial information available, the Service finds the petition does not present substantial information that listing this population may be warranted.

The Olympic mudminnow, a small, brightly colored fish in the Umbridae family, represents a monotypic genus, being the only species in the genus *Novumbra*. There are four genera in the family Umbridae, three found in North America, the fourth in Europe. Distribution of the Olympic mudminnow is limited to southwestern Washington and the Olympic Peninsula. Meldrim (1968) suggests that geological history has determined the general distribution of the species, while behavior and habitat preference have maintained the present limited distribution. Dispersal is limited yet the species is often abundant where found (Wydoski and Whitney 1979). This freshwater species is generally found in quiet, slow moving waters such as in swamps, bogs, ponds, ditches, shallow lagoons and most frequently in marshy habitats. The preferred habitat type is a marshy stream with a muddy bottom, dense vegetation, and stained or dark water (Harris 1974).

A species that is in danger of extinction throughout all or a significant

portion of its range may be listed as an endangered species under the Act. The term ''species'' is defined in 16 U.S.C. 1532 (16) as including ''any subspecies * * * and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' Thus the first deliberation is whether the Olympic mudminnow in the Grass Lake/Green Cove Creek Basin is a recognized subspecies or distinct population that interbreeds.

The Service has considered two factors in determining whether this population would be eligible for listing as a distinct population segment:

1. The discreteness of the population segment in relation to the remainder of the species, and

2. The significance of the population segment to the species.

While the petitioner cited a 1994 letter from Dr. Theodore W. Pietsch (College of Ocean and Fishery Sciences, University of Washington) as evidence of the discreteness and significance of the Grass Lake/Green Cove Creek population, Pietsch only speculated in his letter about the ''apparently long-term geological and genetic isolation'' of this population. He also noted that the reality of whether this population represents ''an 'evolutionary significant unit' * * * should be explored further using modern genetic techniques.'' In this regard, the petitioner does not present, nor is the Service aware of any information indicating the genetic, morphological, or behavioral distinctness of the Olympic mudminnow from the Grass Lake/Green Cove Creek Basin.

Further, Congress directed that the listing of populations be used '' * * * sparingly.'' Therefore, in addition to meeting the criteria for distinctness, the Service should consider a population's biological and ecological significance to the species as a whole. No evidence was presented to suggest that the loss of the mudminnows in Green Cove Creek would result in a significant gap in the range of the Olympic mudminnow, nor that this population occurs in an unusual or unique setting.

The Service concludes that the data contained in the petition, referenced in the petition, and otherwise available to the Service does not present substantial information that the requested action may be warranted since the Grass Lake/Green Cove Creek Basin population of Olympic mudminnows would not be eligible for listing as a distinct population. The Olympic mudminnow is recognized as a category 2 candidate species (59 FR 58999, November 15, 1994), and has been since the Service's December 30, 1982, Notice of Review (47 FR 58454). The Olympic mudminnow has been the subject of an ongoing status review since the 1982 Notice of Review. The Service will retain this species as a category 2 candidate, and will continue to seek information regarding the status or threats to the species. If additional data become available in the future, the Service may reassess the listing priority for this species or the need for listing.

References Cited

Harris, C.K. 1974. The geographical distribution and habitat of the Olympic mudminnow, *Novumbra hubbsi.* Unpublished report, College of fisheries, Univ. of Wash., Seattle.

Meldrim, J.W. 1968. The ecological zoogeography of the Olympic mudminnow (*Novumbra hubbsi*, Schultz). Ph.D. dissertation, Univ. of Wash., Seattle.

Wydoski, R.S. and R.R. Whitney. 1979. Inland Fishes of Washington. Univ. of Wash. Press, Seattle, Washington.

Author. The primary author of this document is Shelley Spalding of the Ecological Services Office in Olympia, Washington (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1972, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 23, 1995.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–14358 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 60, No. 112
Monday, June 12, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY–95–002)

Tentative Voluntary Poultry Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing that it is approving the test marketing of USDA grade identified raw, ready-to-cook, boneless-skinless poultry products, based on tentative grade standards.

DATES: This test-market period begins June 12, 1995 and ends June 12, 1996.

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, Poultry Division, 202–720–3271.

SUPPLEMENTARY INFORMATION:

Background

Poultry grading is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.), and is offered on a fee-for-service basis. It is designed to assist the orderly marketing of poultry products. Quality in practical terms refers to the usability, desirability, and value of a product, as well as its marketability. Poultry grade standards identify and measure degrees of quality in poultry products. They permit important quality attributes to be evaluated uniformly and accurately; they provide a way for buyers and sellers to negotiate using a common language.

Once poultry has been graded according to these standards, it may be identified with the USDA grademark. Over the years, processors have found it advantageous to market grade-identified poultry products and consumers have come to rely on the USDA grademark as assurance that they are getting the quality they want.

Poultry producers and processors are continually developing new, innovative products. Chicken and turkey, in particular, have been transformed into numerous boneless and/or skinless products, thus increasing poultry's share of the consumer's food dollar and responding to consumer demand for food with more built-in convenience and less fat. Current regulations (7 CFR part 70) provide grade standards for boneless poultry breasts, thighs, and tenderloins (§ 70.231), as well as for skinless carcasses and parts (§ 70.232). In addition, on March 30, 1995, the Agency approved the test marketing of USDA grade-identified, boneless/skinless poultry legs and drumsticks, based on tentative grade standards, through April 1, 1996 (60 FR 16428).

The Agency has now been requested by industry to permit the grade identification of raw, ready-to-cook, boneless-skinless poultry products without added ingredients. These products include poultry that has been reduced in size by cutting, slicing, cubing, or similar means and products that are currently marketed ungraded because there are no grade standards for them.

The Agency recognizes that before new standards of quality can be established or current standards of quality can be amended, appropriate investigation is needed. This includes the test marketing of experimental packs of grade-identified poultry products to determine production requirements and consumer acceptance, and to permit the collection of other necessary data. Current regulations (§ 70.3) provide the Agency with the flexibility needed to permit such experimentation, so that new procedures and grading techniques may be tested.

The Agency has worked in partnership with members of the industry to develop tentative grade standards for raw, ready-to-cook, boneless-skinless poultry products without added ingredients and is granting permission for a 1-year test marketing period. At the expiration of this 1-year period, the Agency will then evaluate the test results to determine if the current poultry grading regulations should be amended, through notice-and-comment rulemaking, to include the following tentative standards.

Tentative Grade Standards for Ready-to-cook, Boneless-skinless Poultry Products Without Added Ingredients—A Quality

1. The raw, ready-to-cook, boneless-skinless poultry products without added ingredients must be labeled in accordance with 9 CFR part 381.
2. The poultry product must be derived from ready-to-cook carcasses or parts.
3. The skin and bones shall be removed in a neat manner without undue mutilation of adjacent muscle.
4. The poultry products may be further processed and subdivided by cutting, slicing, cubing, or similarly reducing the size prior to grading. Individual subdivided pieces of poultry must be of sufficient, and relatively uniform, size and shape to determine grade with respect to the quality factors set forth in this section.
5. The poultry products shall be free of cartilage, tendons extending more than ½ inch beyond the meat tissue, blood clots, bruises, and discolorations other than slight discolorations, provided they do not detract from the appearance of the product.
6. Trimming and minor flesh abrasions due to preparation techniques are permitted provided they result in a relatively smooth outer surface with no angular cuts, tears, holes, or undue muscle mutilation in the meat portion.

Dated: June 6, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–14279 Filed 6–9–95; 8:45 am]
BILLING CODE 3410–02–P

Forest Service

RIN 0596–AB53

Outfitting and Guiding Permit Administration and Fees

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of final policy.

SUMMARY: The Forest Service is adopting final policy and procedures for issuing and administering permits and assessing fees for outfitting and guiding activities on National Forest System lands. This policy has been revised to respond to comments on the proposed and interim policies previously published in the **Federal Register** and to address recommendations in several General

Accounting Office reports on administration of Federal concessions. This policy will ensure consistency in outfitter and guide program administration and fees throughout Forest Service units. The text of this policy, which has also been edited and reorganized for clarity, is set forth at the end of this notice.

EFFECTIVE DATE: The final policy is effective June 19, 1995.

FOR FURTHER INFORMATION CONTACT: John Shilling, (202) 205–1426, Recreation, Heritage, and Wilderness Resources Management Staff (2340), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

SUPPLEMENTARY INFORMATION:

Background

Outfitting and guiding includes a wide range of activities, such as river rafting, horseback trips, guided wildlife photography excursions, and mountain-bike tours. Annually, some 2,800 special use permits are in effect for outfitting and guiding on National Forest System lands. The majority of these are for commercial operations. Fees are generally three percent of the revenue generated from the use of National Forest System lands.

On April 8, 1983, the Forest service published a proposed policy for notice and comment on issuance and administration of permits and assessment of fees for outfitting and guiding activities on National Forest System lands (48 FR 15296, Apr. 8, 1983). On February 15, 1984, the agency gave notice of adoption of a final policy as an interim directive to the Forest Service Manual which addressed issues raised in comments received on the proposed policy (49 FR 5782, Feb. 15, 1984). The same interim directive was reissued without change in 1988.

When that interim directive could no longer be reissued, the Forest Service published a notice of interim direction and request for comments on April 18, 1990 (55 FR 14445, Apr. 18, 1990). With only minor differences, the April 18, 1990, interim directive continued the direction contained in the 1983 proposed policy, the 1984 interim directive, and the 1988 interim directive which it replaced. The 1990 interim directive has been reissued several times and cannot be reissued again pursuant to agency directive policy.

Since April 1990, commercial recreation concessions on Federal lands have been the subject of several General Accounting Office (GAO) studies. In June 1991, GAO released a report, ''Federal Lands: Improvements Needed in Managing Concessioners'' (GAO/RCED–91–163, June 11, 1991), that directed the Federal land-management agencies to develop policies that achieve greater consistency in the management of concession programs and authorizing instruments. A subsequent report issued by GAO, ''Federal Lands: Improvement Needed in Managing Short-Term Concessioners'' GAO/RCED–93–177, Sept. 14, 1993), made further recommendations for improving administration of Federal concessions. The 1993 report specifically addressed short-term concessions, including outfitting and guiding.

The address the concerns expressed in these reports, to address the comments received on the previously published proposed policy and interim directive, and to improve consistency in program administration, the Forest Service is adopting final policy and procedures governing administration of outfitting and guiding permits and calculation of fees. This policy is being issued as amendments to chapters 30 and 40 of Forest Service Handbook (FSH) 2709.11, Special Uses Handbook. The text of these amendments is set out at the end of the notice.

This final policy makes substantive changes to the direction previously issued in the 1990 interim directive. This final policy also differs in certain nonsubstantive ways from the 1990 interim directive. The agency has reorganized, clarified, and edited the 1990 interim directive to conform with current agency requirements for the content, format, and style of Forest Service directives.

In response to a lawsuit, *Wilderness Watch v. Robertson,* No. 92–0740 (D.D.C, Apr. 8, 1993) and in accordance with the court's 1993 order in the case, this final policy revises terminology and clarifies and expands policy on the kinds of structures, improvements, or installations that may be authorized for use in outfitting and guiding operations.

The agency has also clarified its direction on permit renewal. At this time, where outfitting and guiding services have been previously authorized and the authorization is expiring, the agency favors noncompetitive reissuance of special use authorizations to outfitters and guides who have a history of satisfactory performance over providing new competitive opportunities (see sec. 41.53f, para. 3 of the policy set out at the end of this notice). In the future, however, the agency may publish for notice and comment a proposed policy providing for competition for outfitting and guiding permits.

The 1990 interim directive defined ''priority use'' as ''a Forest Service commitment to the holder of a permit for outfitting and guiding to give priority consideration to granting the holder a specific amount of available future use.'' The Forest Service has redefined ''priority use'' in this final policy to reflect more accurately the duration of the authorized use, factors determining the amount of use, and renewability of permits providing for priority use. Priority use is now defined in section 41.53c as: ''Authorization of use for a period not to exceed five years. The amount of use is based on the holder's past use and performance and on forest land and resource management plan allocations. Authorizations providing for priority use are subject to renewal.'' Under the final policy, outfitting and guiding permits may be renewed without competition when the holder has performed satisfactorily (sec. 41.53f, para. 3). Renewal will be at the sole discretion of the authorized officer. This final policy is consistent with applicable Federal regulations and continues direction contained in the 1983 draft policy, the 1984 interim directive, and the 1990 interim directive.

Further, the final policy in section 41.53f provides that an authorized officer may issue a permit without competition to the party who acquires ownership of or a controlling interest in an outfitting and guiding business entity, if the authorized officer determines that the prospective holder meets requirements under Forest Service regulations (36 CFR 251.54).

Summary of Key Revisions

The Forest Service received nine comments on the 1990 interim directive within the specified comment period: three from outfitter and guide associations; three from outfitters and guides; two from State outfitter and guide licensing boards; and one from an individual.

The following is a section-by-section analysis of the final policy in chapters 30 and 40 of FSH 2709.11 and the Forest Service's response to the comments received on the 1990 interim directive, relevant court rulings, and recommendations from GAO reports.

Chapter 30—Fee Determination

Sections 37 to 37.24—Outfitter and Guide Fees

In *Wilderness Watch v. Robertson,* plaintiffs contended that certain outfitting and guiding activities as authorized under special use permit and administered by the Forest Service in

the Frank Church River of No Return Wilderness (Frank Church Wilderness), located in the Boise, Challis, Payette, Salmon, Bitterroot, and Nez Perce National Forests in Idaho, violated the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*). The court ruled in favor of plaintiffs on several issues, including authorization of permanent structures and installations (such as caches and water transmission systems) in the Frank Church Wilderness and continuing, exclusive use of campsites reserved by outfitters and guides in the Frank Church Wilderness. The court ordered the parties to confer and submit a joint remedial plan to ensure compliance with applicable provisions of the Wilderness Act and Forest Service regulations.

The 1990 interim directive included caches as acceptable installations and included the term ''reserved site.'' In accordance with the holding in *Wilderness Watch* and the requirements of the Wilderness Act, the final policy does not authorize permanent structures in wilderness areas. The agency has replaced the term ''reserved site'' with the term ''assigned site,'' which is defined as a site that is designated and authorized for occupancy and use by a holder who is providing a recreation service to the public during the period of occupancy (sec. 37.05). In addition, the agency has revised the administrative practice of reserving sites for use by outfitters and guides under special use permits. Under the final policy, the authorized officer must specify and describe the proposed use of specific assigned sites in operating plans and annual itineraries (sec. 41.53j).

Section 37.01—Authority. The agency has added this section to include cross-references to other sections of the Forest Service Handbook (FSH) and Forest Service Manual (FSM) that provide direction on laws, regulations, and other authorities for administration of special uses programs (including outfitting and guiding) and fees on NFS lands.

Section 37.03—Policy. The agency has added this section to provide direction and cross-references to other FSH and FSM sections that provide additional direction. The section includes direction on the use of the graduated rate fee system (GRFS) to determine fees for outfitting and guiding activities authorized in connection with a commercial service site under permit. This direction originally appeared in a different section of the 1990 interim directive, and the agency has determined that this direction is more appropriately coded to the policy section.

Section 37.04—Responsibility. The agency has added this section to provide a cross-reference to an FSM section that provides related direction and to add the responsibility of the Director of Recreation, Heritage, and Wilderness Resources Management for adjusting the minimum fee and the assigned campsite fee every three years with 1993 as the base year, based on the Gross Domestic Product—Implicit Price Deflator Index.

Section 37.05—Definitions. The agency has added definitions for ''adjustment for use off National Forest System lands,'' ''assigned site,'' ''client days'' (including ''National Forest System client days'' and ''total client days''), ''non-use,'' ''revenue additions,'' ''revenue exclusions,'' ''short-stop fee,'' and ''unapproved non-use.'' The agency has revised definitions for ''adjusted gross revenue,'' ''gross revenue,'' ''service day,'' and ''duration of the outfitted or guided trip.'' ''Average adjusted service day client charge'' is retitled ''average client-day charge.''

''Reserved site'' is replaced with ''assigned site,'' which is defined as a site that is designated and authorized for occupancy and use by a holder who is providing a recreation service to the public during the authorized period of occupancy.

''Adjustment for use off National Forest System lands'' is defined as the reduction in the fee for commercial use to account for the portion of the outfitted or guided trip that occurs off National Forest System lands.

''Client days'' is defined as either ''National Forest System client days'' or ''total client days.'' ''National Forest System client days'' is defined as the number of service days (that is, days on the National Forest System) for the duration of the outfitted or guided trip multiplied by the number of clients on the trip. ''Total client days,'' which applies where there is use both on and off National Forest System lands, is defined as the total number of days for the duration of the outfitted or guided trip multiplied by the number of clients on the trip. Client days are used to calculate the average client-day charge and the adjustment for use off National Forest System lands in determining the fee for commercial use.

''Non-use'' was previously undefined, although the term was used in final fee calculation. Lack of a definition for ''non-use'' has resulted in inconsistent fee assessments and miscalculations in various Forest Service units. Consequently, the agency has defined ''non-use'' in the final policy as authorized use the holder did not use. In addition, the agency has defined ''unapproved non-use'' as authorized use the holder did not use and for which the holder has not properly requested and received a waiver. Under the final policy, the holder must pay for unapproved non-use. See the direction in section 37.21g set forth at the end of this document.

To conform with agency policy on fiscal management and accounting, including generally accepted accounting principles or other comprehensive basis of accounting, and to improve consistency in fee calculation when fees are based on gross revenue, the agency has added the definition of ''revenue additions,'' which is defined as the value of gratuities and sales of certain kinds of goods and services; specified which items are excluded from gross revenue; and included a definition for ''revenue exclusions.''

The new term ''short-stop fee'' refers to a fee established by Regional Foresters for trips with two service days or less spent on National Forest System lands. (An example would be an Alaskan tour which stops for one day or less at a National Forest System site.) Under the 1990 interim directive, Regional Foresters were allowed to establish additional discounts for use off National Forest System lands. The Alaska Region of the Forest Service has suggested the short-stop fee for use in that Region. Since the short-stop fee may have applicability in other Regions, the agency has provided for its Servicewide use in the final policy (sec. 37.21c, para. 3).

The revised definition for ''gross revenue'' is revenue from goods or services provided during the outfitted or guided trip; revenue received for scheduling or booking the trip; and revenue provided off National Forest System lands, unless specifically excluded.

The term ''adjusted gross revenue'' is defined as gross revenue and revenue additions less applicable exclusions. ''Revenue exclusions'' is defined as revenue derived on private land from the sale of items not directly related to the outfitting or guiding operation conducted on National Forest System lands; revenue conveyed to the State for hunting and fishing licenses; and revenue from the sale of operating equipment.

The agency has edited the definitions for ''service day'' and ''duration of outfitted or guided trip'' for clarity and format.

Section 37.21—Fees. To clarify direction on fee calculation, the agency has reordered the sequence of topics in this section (including sections 37.21 to 37.21j) covering fees to be collected for

specific uses associated with outfitting and guiding activities.

Section 37.21a—Minimum fee. For 1993–96, the agency has established a minimum annual fee of $70 per permit. Using 1993 as a base year, the agency will adjust the minimum annual fee per permit every three years based on the Gross Domestic Product—Implicit Price Deflator Index. In addition, the agency has edited this section to conform with Forest Service directive format and style.

Section 37.21b—Fee for Incidental Use for Temporary Special-Use Permits. To provide clarity and to ensure consistency in fee collection, the agency has added direction on collecting a minimum fee when commercial outfitting and guiding is authorized by a temporary permit. Form FS–2700–25, Temporary Special-Use Permit.

Section 37.21c—Fee for Commercial Use. Portions of the direction in this section previously appeared in a section entitled ''Final Fee.'' The agency has included this section to ensure consistent fee calculation and collection for commercial outfitting and guiding activities on National Forest System lands. Further, to provide clear direction and to ensure consistent fee calculation, the agency has expanded this section to include examples of fee calculations for option A, option B, and the short-stop fee. Option A establishes a fee based on an average client-day charge. Option B establishes the fee as three percent of the adjusted gross revenue. A short-stop fee is established for activities of short duration (two service days or less).

Section 37.21d—Determining Service Days.

Comment: Three respondents objected to the definition for ''service day,'' but did not offer alternative wording.

Response: The agency believes that the revised definition for ''service day'' (previously discussed under section 37.05) is clearer and will make fee calculations easier to perform and more accurate.

Comment: One respondent suggested a method for calculating service days for drop-off services that would account for the complete number of days a holder is providing goods or services to a client. The respondent recommended that all drop-off and packing days be counted as service days. Another respondent concurred with this view, observing that all full or fractional days on which supply, spot, dunnage, or drop-off services are provided by an outfitter or guide should be counted as service days.

Response: The agency with these comments. Under the final policy the agency counts service days in three drop-off situations. In the first situation, a holder guides a client to a specific drop-off site on National Forest System lands; the holder neither retrieves the client, nor returns to the drop-off site to guide the client. In the second situation, the holder guides the client to a specific drop-off site on National Forest System lands and returns to pack the client out. In the third situation, the holder guides the client to a specific drop-off site on National Forest System lands, the client occupies the holder's assigned site, and the holder packs the client out.

In the first situation, the agency would count one full service day for fee purposes. In the second situation, the agency would count one full service day for drop-off services and one full service day for pick-up services. In the third situation, the agency would count one full service day for drop-off services, one full service day for pick-up services, and one service day for each day in between.

The agency has expanded this section to include direction on the three situations to clarify counting of service days for fee calculation when drop-off and pick-up services are provided. To conform to Forest Service directive organization, the agency has removed the definition for ''service day'' that formerly appeared in this section of the 1990 interim directive and has included the definition in section 37.05, Definitions.

Section 37.21e—Adjustment for Use Off National Forest System Lands. The agency has edited this section to conform with Forest Service directive format and style.

Section 37.21f—Fee for Additional Use. The agency has edited this section to conform with Forest Service directive format and style.

Section 37.21g—Payment for Unapproved Non-Use. To ensure consistency in fee collection, the agency has clarified the direction to charge the holder for unapproved non-use when the holder has not properly requested and received a waiver for authorized non-use.

Section 37.21h—Fee for Assigned Sites. In accordance with the curt order is *Wilderness Watch* and the requirements of the Wilderness Act, the agency has replaced the term ''reserved site'' with the term ''assigned site.'' For 1993–96, the agency has established an annual fee of $140 for the use of each assigned site. Using 1993 as a base year, the agency will adjust the minimum annual fee for each assigned site every three years based on the Gross Domestic Product—Implicit Price Deflator Index.

Section 37.21i—Fee for Grazing Livestock. The agency has edited this section to conform with Forest Service directive format and style.

Section 37.21j—Fee for Nonprofit Organizations. To ensure consistency in fee calculation, the agency has stated that the fee for nonprofit organizations is three percent of annual adjusted gross revenue. The 1990 interim directive did not clearly state that nonprofit organizations pay a fee based on a percentage of annual adjusted gross revenue.

Section 37.21k—Fee for Educational Institutions. To ensure consistency in fee calculation, the agency has stated that the fee for educational institutions is three percent of annual adjusted gross revenue. The 1990 interim directive did not clearly state that educational institutions pay a fee based on a percentage of annual adjusted gross revenue.

Section 37.22—Estimated Fee. To ensure consistency in fee collection, the agency has clarified direction on collecting a portion or all of the fee in advance.

Section 37.23—Final Fee. To ensure consistency in fee calculation, the agency has clarified direction on calculating the final fee.

Section 27.24—Billing and Refunds. Related direction in section 41.53f of the final policy, Applications and Issuance of Permits, directs the authorized officer to collect fees for outfitting and guiding under the authority of the Land and Water Conservation Fund (LWCF) Act of 1964. This is an administrative change; previously, fees were deposited into the general receipts of the Treasury. Fees collected under the LWCF Act are deposited into the LWCF. Once appropriated by Congress, LWCF monies many be used for management of Federal outdoor recreational resources and facilities.

Chpater 40—Special Uses Administration

Sections 41.53 to 41.531—Outfitters and Guides

Comment: Two respondents commented generally on the administrative topics of assignment and management of temporary use, applications and issuance of permits, reductions, and permits for institutional and semi-public outfitting and guiding. These respondents were representatives of State outfitter and guide licensing boards who expressed general concern about the policy but did not specify wording changes in the sections covering these topics.

The respondents requested exception for their States (Wyoming and Idaho) from certain sections of the policy, specifically: Assignment and Management of Temporary Use; Applications and Issuance of Permits; Reductions; and Permit Administration, including Performance Evaluation. They contended that their respective State laws, State outfitting and guiding rules and regulations, and memoranda of understanding with local Forest Service offices exempt them from Federal law and national policy.

Response: Forest Service Regional Offices in Missoula, Montana, Portland, Oregon, and Ogden, Utah have memoranda of understanding that were executed in 1985 with the States of Wyoming and Idaho. The memoranda describe local coordination and implementation procedures as agreed upon between those Regional Offices and the States of Wyoming and Idaho in the context of State laws and regulations. These memoranda do not provide any basis, however, for exempting these States from the requirements of Forest Service regulations or national policy for issuing and administering permits and assessing fees for outfitting and guiding activities; These requirements ensure consistency in program administration throughout the National Forest System units.

Applicable Federal regulations (36 CFR 251.50) require a special use authorization for commercial use and occupancy of National Forest System lands, including outfitting and guiding activities. The Forest Service further implements its delegated land-management authority by issuing national policy in the Forest Service Manual and Handbooks, including policy on outfitting and guiding activities. These regulations and policies cannot be waived by Regional memoranda of understanding. The final policy maintains the longstanding Forest Service policy that permit holders must agree to comply with all applicable State laws. Applicable State laws, including those enforced by State outfitter and guide licensing boards and game-management agencies, apply to holders of permits authorizing the use of National Forest System lands for outfitting and guiding activities.

Section 41.53a—Objectives. The agency has added the objective that outfitting and guiding activities be conducted in a manner that protects environmental resources.

Section 41.53b—Policy.

Comment: One respondent recommended that the term for outfitters and guides who are operating without a permit be changed from ''pirate'' to ''illegal.''

Response: applicable Federal regulations, commercial use and occupancy of National Forest System lands requires a special use authorization. Commercial use and occupancy of National Forest System lands without a special use authorization is defined as ''unauthorized.'' Therefore, the agency has replaced the term ''pirate outfitters'' with the term ''unauthorized outfitting and guiding activities'' in paragraph 4.

In accordance with the holding in *Wilderness Watch* and the requirements of the Wilderness Act as described previously in the discussion of sections 37 to 37.24, the final policy in paragraphs 2 and 3 does not authorize permanent structures in wilderness. The agency has replaced the term ''reserved site'' with the term ''assigned site,'' which is defined in section 27.05. In addition, the proposed use of specific assigned sites must be specified and described in operating plans and annual itineraries (sec. 41.53j).

To ensure consistency in permit administration, the agency has included in paragraph 5 of this section direction not to issue a separate special use authorization for commercial service sites (such as a lodge or resort) that have outfitting and guiding activities as part of the authorized operation. (Section 37.03, Policy, provides direction on the use of the Graduated Rate Fee System to determine fees for outfitting and guiding activities authorized in connection with a commercial service site under permit.)

Also, the agency has added ''hitching posts'' to the list in paragraph 2 of structures or improvements with negligible value and has moved ''pack stations'' from the list of structures or improvements with negligible value to the list of commercial public service sites in paragraph 5. This change more accurately acknowledges the value of pack station facilities.

Section 41.53c—Definitions.—The agency has made the following revisions to this section: adds definitions for ''incidental use'' and ''renewal'' and revises the definitions for ''priority use,'' ''temporary use,'' and ''transportation livestock.'' The definitions for ''guiding'' and ''outfitting'' have been edited for clarity.

''Incidental use'' was previously undefined, although the term was used in direction to allow the authorized officer to waive permit requirements. The lack of a definition for ''incidental use'' has created discrepancies in determining impacts on the environment and on the quality of services provided to the public. The agency has defined ''incidental use'' and has added it to this section.

The agency has clarified the definition for ''priority use'' in conformance with Forest Service directive style; included the five-year maximum term specified in earlier interim directives; provided for determination of use based on the holder's past use and performance and on forest land and resource management plan allocations; and provided for renewal subject to certain conditions.

This policy is consistent with applicable Federal regulations (36 CFR 251.64) and with direction contained in the 1983 draft policy, the 1984 interim directive, and the 1990 interim directive. These earlier directives provided for a five-year maximum term for priority use; reductions in priority use assignments and the number of permit holders based on forest land and resource management plan allocations; reductions in priority use assignments for reasons in the public interest, such as protection of forest resources and public health and safety; and changes in priority use assignments based on past use and performance.

The agency has edited the definitions for ''temporary use'' and ''transportation livestock'' to conform with Forest Service directive format and style.

Section 41.53d—When Permits Are Required. The agency has revised this section to conform with Forest Service directive format and style. In addition, the agency has clarified that a permit is not needed when services are being provided to Forest Service contractors or Federal officials in the course of their official duties.

Section 41.53e—Incidental Use. The agency has expanded and clarified this section by providing direction on authorizing incidental use. As defined in 41.53c, use is incidental when the proposed annual use is 50 service days or less and is anticipated to have little or no impact on public health and safety, the environment, or other authorized uses and activities.

The agency developed Form FS–2700–25, Temporary Special-Use Permit, in June 1992 for authorizing use that is seasonal or of short duration and that involves minimal improvements or investment. The agency has included direction in the final policy on use of Form FS–2700–25. The agency has also included direction on use of Form FS–2700–4, Special-Use Permit, rather than Form FS–2700–25, when the incidental use involves the following activities: white water travel, use of firearms, livestock or aircraft, or all-terrain or off-highway vehicle travel.

Section 41.53f—Applications and Issuance of Permits.—The agency has added this section to clarify the application process and the process for issuance of permits under applicable Federal regulations (36 CFR 251.54) and Forest Service policy. Paragraph 3 has been added which addresses renewal of terminating permits. The final policy states that direction in FSM 2712.2 on issuance of prospectuses applies to new outfitting and guiding opportunities.

The final policy directs the authorized officer to collect fees for outfitting and guiding under the authority of the LWCF Act of 1965. (Further discussion of this policy appears earlier in this notice under section 37.24.)

The agency also has revised this section to include direction in paragraph 4 on change of ownership or control of the business entity. The agency has added the term ''business entity'' to distinguish this change in ownership from change in ownership of personal or real property. The agency also has expanded and edited this section to conform with direction in FSM 2716, Change of Ownership.

Section 41.53q—Assignment and Management of Temporary Use. The agency has edited this section to conform with Forest Service directive format and style.

Section 41.53h—Assignment and Management of Priority Use. To ensure consistency in administration and compliance with standards and guidelines in forest land and resource management plans, the agency has added that assignment of priority use and the amount of priority use shall be at the discretion of the authorized officer and shall be consistent with direction in forest land and resource management plans.

To ensure consistency in administration, the agency has revised direction on reduction in the amount of priority use. The final policy (para. 3b) requires reduction in the amount of priority use if the holder has utilized less than 70 percent of the assigned amount for three consecutive years. The 1990 interim directive required reduction in the amount of priority use if the holder had used less than 70 percent of the assigned amount in at least two of the past five years. This direction has been subject to broad interpretation and misapplication. The agency believes that a period of three consecutive years of under-utilization is easier to quantify and demonstrates a trend of lack of business due to a decrease in customer demand for services.

Section 41.53i—Reduction of Use or Service Days. The agency has added direction that prior to reassigning use that may be available after a reduction, the authorized officer must solicit applications from current holders assigned priority use and base assignment of use on services proposed and performance.

Section 41.53j—Permit Terms and Conditions. The agency has edited this section of the final policy to conform with Forest Service directive format and style and with standard terms and conditions in special use permits.

Section 41.53k—Permit Administration. For clarity, the agency has put direction on performance standards and performance ratings of holders in separate paragraphs and provided more detailed direction, such as mid-season review and evaluation for all holders. This procedural direction is needed to meet due process requirements under Federal law for giving holders notice and the opportunity to comply. In addition, the section in the 1990 interim directive entitled ''Subletting of Use'' has been retitled ''Assignment of Use'' as paragraph 2 in this section of the final policy.

Section 41.521—Permits for Institutional and Semi-Public Outfitting and Guiding. This section now states that permits must be consistent with forest land and resource management plan direction.

Regulatory Impact

This final policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant policy. The final policy does not have an effect of $100 million or more on the economy; substantially increase prices or costs for consumers, industry, or State or local governments; or adversely affect competition, employment, investment, productivity, innovation, or the ability of domestic companies to compete in foreign markets. The final policy consists primarily of technical and administrative changes for authorization of occupancy and use of National Forest System lands.

Moreover, this final policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this final policy will not have a significant economic impact on a substantial number of small entities because it will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market. As stated previously, this final policy consists primarily of technical and administrative changes concerning authorization of occupancy and use of National Forest System lands.

No Takings Implication

This policy has been reviewed for its impact on private property rights under Executive Order 12630 of March 15, 1988, as implemented by the United States Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings. Executive Order 12630 does not apply to this final policy because it consists primarily of technical and administrative changes governing authorization of occupancy and use of National Forest System lands. Forest Service special use authorizations for outfitting and guiding do not grant any right, title, or interest in or to lands or resources held by the United States.

Civil Justice Reform Act

This policy has been reviewed under Executive Order 12778, Civil Justice Reform. After adoption of this final policy, (1) All State and local laws and regulations that conflict with this policy or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final policy; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Controlling Paperwork Burden on the Public

This final policy contains information collection requirements as defined in 5 CFR 1220 that have been approved by the Office of Management and Budget and assigned control number 0596–0082. The agency estimates that the reporting burden for the collection of information in the policy is 5 to 10 hours per response.

Environmental Impact

This final policy consists primarily of technical and administrative changes related to the authorization of occupancy and use of National Forest System lands. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180 Sept. 18, 1992), categorically excludes from documentation in an environmental assessment (EA) or environmental impact statement (EIS) ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes or instructions.'' Based on the nature and scope of this final policy, the agency has determined that it falls within this category of actions and that no extraordinary circumstances exist which

would require preparation of an EA or an EIS.

Dated: May 30, 1995.

Mark A. Reimers,

Acting Chief.

Final Handbook Revision

The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, that are the subject of this notice are set out here. The audience for this direction is Forest Service employees charged with issuing and administering special use permits for outfitting and guiding.

CHAPTER 30—FEE DETERMINATION

37—Outfitter and Guide Fees. (For related direction on special uses administration, see sec. 41.53).

37.01—Authority. (Sec. 30.1; FSM 2701.1).

37.03—Policy. (Sec. 31; FSM 2715.03).

37.03a—Fees for Activities Associated with Commercial Public Service Site. Use the Graduated Rate Fee System (GRFS) (FSM 2715.11) to determine fees for outfitter and guide activities (such as cross-country skiing or horseback riding) authorized by the Forest Service in connection with an authorized commercial public service site on National Forest System lands (such as a resort or lodge). Where applicable, require holders under GRFS to pay additional fees for assignment of sites (sec. 37.21h) and livestock grazing use (sec. 37.21i).

37.03b—Fees for Activities Not Associated with Commercial Public Service Site. Require payment of fees according to the direction in sections 37.21 to 37.24 for outfitter and guide activities authorized as a distinct activity not associated with a public service site.

37.04—Responsibility. (FSM 2704.13). The Washington Office Director of Recreation, Heritage, and Wilderness Resources Management is responsible for adjusting the minimum fee and the assigned site fee every three years with 1993 as the base year, based on the Gross Domestic Product-Implicit Price Deflator Index.

37.05—Definitions. See section 41.53c for additional definitions for ''guiding,'' ''holder,'' ''incidental use,'' ''outfitting,'' ''priority use,'' ''renewal,'' ''temporary use,'' and ''transportation livestock''.

Adjusted Gross Revenue. Gross revenue and revenue additions less applicable exclusions.

Adjustment for Use Off National Forest System Lands. The reduction in the fee for commercial use to account for the portion of the outfitted or guided trip that occurs off National Forest System lands (sec. 37.21e).

Assigned Site. A site that is designated and authorized for occupancy and use by a holder who is providing a recreation service to the public during the authorized period of occupancy. Examples include but are not limited to base and drop camps, picnic sites, loading facilities, boat launches, and helispots.

Average Client-Day Charge. Adjusted gross revenue divided by the total number of client days for the duration of the outfitted or guided trip.

Client Charge. The outfitter's or guide's charge per client for an outfitted or guided trip.

Client Days.

1. *National Forest System Client Days.* The number of service days (that is, days on National Forest System lands) for the duration of the outfitted or guided trip multiplied by the number of clients on the trip. See section 37.21c for related direction.

2. *Total Client Days.* Where there is use both on and off National Forest System lands, the total number of days for the duration of the outfitted or guided trip multiplied by the number of clients on the trip. See section 37.21c for related direction.

Duration of Outfitted or Guided Trip. The period that begins when the client first comes under the care and supervision of the outfitter or guide, including arrival at the holder's headquarters or local community, and ends when the client is released from the outfitter's or guide's care and supervision. Duration of the outfitted or guided trip is used to calculate client days, which in turn are used to determine the average client-day charge and the adjustment for use off the National Forest System lands. See section 37.21c for related direction.

Gross Revenue. The total amount of receipts from the sale of goods or services provided by the holder in connection with the outfitted or guided trip. These receipts include:

1. Revenue received by the holder from clients for goods or services provided during the outfitted or guided trip (the client charge per trip multiplied by the total number of clients on each trip);

2. Revenue received by the holder or the holder's employees or agents for scheduling or booking the outfitted or guided trip; and

3. Revenue from goods or services provided off National Forest System lands, such as lodging and meals, unless specifically excluded.

Non-Use. Authorized use the holder did not use (see also ''Unapproved non-use'').

Revenue Additions. The market value of the following items which are added to gross revenue:

1. The value of goods and services that are donated or the value of goods and services that are bartered in exchange for goods and services received that are directly related to the outfitted or guided trip; and

2. The value of gratuities, which are goods, services, or privileges that are not available to the general public and that are donated or provided without charge or at a discount to organizations; individuals; the holder's employees, owners, or officers; or immediate family members of the holder's employees, owners, or officers.

Revenue Exclusions. The following items which are excluded from gross revenue:

1. Revenue derived from goods or services sold on private land that are not related to outfitting and guiding operations conducted on National Forest System lands, such as souvenirs, telephone toll charges, and accident insurance sales;

2. Amounts paid or payable to a State government licensing authority or recreation administering agency from sales of hunting or fishing licenses and recreation fee tickets; and

3. Revenue from the sale of operating equipment, rental equipment, capitalized assets, or other assets used in outfitting and guiding operations. Examples are horses, tack, watercraft, and rental skis and boots, which are sold periodically and replaced.

Service Day. A day or any part of a day on National Forest System lands for which an outfitter or guide provides goods or services, including transportation, to a client.

Short-Stop Fee. Fees for trips that use National Forest System lands incidental to the purpose of the trip, such as a bus tour that takes clients on a sightseeing trip. The rate is established by the Regional Forester for trips with two service days per client or less spent on national Forest System lands.

Unapproved Non-Use. Authorized use days the holder has not used and for which the holder has not properly requested and received a waiver (see also ''Non-use'').

37.1—Commercial Services Associated with Commercial Public Service Site. Use the Graduated Rate Fee system to determine outfitter and guide fees associated with such sites (sec. 37.03a and FSM 2715.11).

37.2—Commercial Services Not Associated with Public Service Site

37.21—Fees. Fees are assessed against adjusted gross revenue. Fees are also assessed against all unapproved non-use.

37.21a—Minimum Fee. The minimum fee for outfitting and guiding on National Forest System lands is $70 annually per permit for 1993–1996. Using 1993 as a base year, the Washington Office Director of Recreation, Heritage, and Wilderness Resources Management adjusts the minimum fee every three years based on the Gross Domestic Product-Implicit Price Deflator Index.

37.21b—Fee for Temporary Use Permits for Incidental Use. When commercial outfitting and guiding is authorized by a temporary permit, use Form FS–2700–25, Temporary Special-Use Permit, to collect the minimum fee (sec. 3721a). The authorized officer may waive the minimum fee only if the use meets the criteria listed in 36 CFR 251.57 and section 31.21k.

37.21c—Fee for Commercial Use. Calculate and collect a fee for commercial outfitting and guiding occurring on National Forest System lands. Charge for any commercial use of National Forest System lands for outfitting or guiding, even if unauthorized.

Upon the authorized officer's approval of the prospective holder's application for a special use permit, advise the applicant to select option A or B (para. 1 and 2) to be used in calculating the fee. Include the selected method as a condition of the permit issued to the holder, and use that method to calculate the fee for the period authorized.

1. *Option A.* The fee is based on an average client-day charge using the following schedule of rates:

SCHEDULE OF RATES

Average client-day charge (for client days on and off NFS lands	Client-day fee
Less than $8.00	$.25
8.01–20.00	.40
20.01–35.00	.80
35.01–50.00	1.30
50.01–75.00	1.90
75.01–100.00	2.60
100.01–125.00	3.40
125.01–150.00	4.10
150.01–175.00	4.90
175.01–200.00	5.60
200.01–250.00	6.75
250.01–300.00	8.25
300.01–400.00	10.00
Over 400.00	3 percent of the average, client-day charge.

Calculate the fee as follows:

a. *Client Days (National Forest System and Total).* To determine the number of National Forest System client days, multiply the number of service days for the duration of the outfitted or guided trip by the number of clients on each trip. To determine the number of total client days, multiply the total number of days for the duration of the outfitted or guided trip by the number of clients on each trip. See example A–2 in this section for additional direction on determining total client days.

b. *Adjusted Gross Revenue.* Multiply the client charge per trip by the total number of clients on each trip, add any other gross revenue and applicable revenue additions, and subtract any applicable revenue exclusions (sec. 37.05). This figure represents adjusted gross revenue for the duration of the outfitted or guided trip.

c. *Average Client-Day Charge.* Divide the adjusted gross revenue by the number of client days (National Forest System or total) for the duration of the outfitted or guided trip. This figure is the average client-day charge.

d. *Client-Day Fee.* Refer to the preceding Schedule of Rates, and use the average client-day charge to determine the client-day fee.

e. *Interim Calculation for Fee for Commercial Use.* Where use is strictly on National Forest System lands, multiply the number of National Forest System client days by the client-day fee to determine the fee for commercial use. Where use is both on and off National Forest System lands, multiply the number of total client days by the client-day fee to determine the interim calculation for commercial use, and adjust for use off National Forest System lands under the following paragraph f.

f. *Adjustment for Use off National Forest System Lands.* Adjust for use off National Forest System lands, if applicable, by dividing the number of National Forest Client days (or hours, miles, and so forth) by the number of total client days (or hours, miles, and so forth) to determine the amount of time spent on National Forest System lands. Refer to the schedule in section 37.21e to determine the appropriate percentage of fee reduction. See section 37.21e for the use of other equitable units of measure to determine adjustment for use off National Forest System lands.

Example A–1: In one operating season, the holder is authorized to provide two trips, both of which are solely on NFS lands:
July 27–29 for 3 clients @ $450/client
August 18–21 for 7 clients @ $500/client

a. Client Days (all NFS):

3 service days × 3 clients = 9 NFS client days
4 service days × 7 clients = 28 NFS client days

37 NFS client days

b. Adjusted Gross Revenue:

$450 × 3 clients = $1,350
$500 × 7 clients = $3,500

$4,850 gross revenue, plus $0 revenue additions and minus $0 revenue exclusions.

c. Average Client-Day Charge (all NFS client days in this example):

$$\frac{\$4{,}850 \text{ adjusted gross revenue}}{37 \text{ NFS client days}} = \$131$$

d. Client-day Fee (all NFS client days in this example):
$131 average client-day charge from step c corresponds to a $4.10 client-day fee.
e. Fee for Commercial Use:

37 NFS client days × $4.10 client-day fee = $151.70 fee.

Example A–2: In one operating season, the holder is authorized to provide two trips. Both Trips include time on and off NFS lands.

July 4–13 for 8 clients @ $2,000/client
August 10–23 for 7 clients @ $3,000/client

During each trip, 3 of the 10 days are on NFS lands.

a. Client Days (Total):

10 total days × 8 clients =	80 total client days
10 total days × 7 clients =	70 total client days
	150 total client days

b. Adjusted Gross Revenue:

$2,000 × 8 clients =	$16,000
$3,000 × 7 clients =	$21,000
	$37,000

gross revenue, plus $0 revenue additions and minus $0 revenue exclusions.

c. Average Client-Day Charge:

$$\frac{\$37{,}000 \text{ adjusted gross revenue}}{150 \text{ total client days}} = \$246.67$$

d. Client-Day Fee:

$246.67 average client-day charge corresponds to a $6.75 client-day fee.

e. Interim Calculation for Fee for Commercial Use:

150 total client days × $6.75 client-day fee = $1,012.

f. Adjustment for use off NFS lands:

NFS client days:

3 service days × 8 clients =	24 NFS client days
3 service days × 7 clients =	21 NFS client days
	45 NFS client days

$$\frac{45 \text{ NFS client days}}{150 \text{ total client days}} = 30\%$$

Which corresponds to a 40% fee reduction (sec. 37.21e):

$1,012 × 40% = $404.80

$1,012 − 404.80 = $607.20 fee for commercial use, which can be rounded to $607.

2. *Option B.* The fee is 3 percent of the annual adjusted gross revenue, minus any applicable adjustment for use off National Forest System lands. Determine the gross revenue, add any applicable revenue additions, and subtract any applicable revenue exclusions to determine the adjusted gross revenue. Multiply the adjusted gross revenue by 3 percent; then adjust, if applicable, for use off National Forest System lands to determine the fee for commercial use (sec. 37.05; 37.21c, para. 1.b, and 37.21e).

Example B–2: For one year, the holder had an annual adjusted gross revenue of $4,850 and used all 100 authorized use days.

$4850 × 0.03 = $145.50 fee for actual commercial use.

Example B–2: For one year, the holder had an annual adjusted gross revenue of $4,650 and used 90 days of 100 authorized use days. Unapproved non-use accounted for 10 days.

$4,650 × 0.03 = $139.50 fee for 90 days of commercial use.

$$\frac{\$139.50}{90 \text{ days}} = \$1.55 \text{ per day}$$

$1.55 per day × 10 days = $15.50 fee for 10 days of unapproved non-use.

$139.50 + $15.50 = $155 fee for commercial use.

Example B–3: An off-road tour outfitter has an adjusted gross revenue of $250,000. The travel routes used are across NFS lands and private lands. The time spent on NFS lands is 50 percent of the duration of the outfitted or guided trips.

$250,000 × 0.3 = $7,500

50 percent duration on NFS lands corresponds to a 40% fee reduction (sec. 37.21e):

$7,500 × 40% = $3,000

$7,500 − $3,000 = $4,500 fee for commercial use.

3. *Short-Stop Fee.* (Sec. 37.05). Fees are calculated from rates established by the Regional Forester for situations in which commercial tours and trips involve only very short stops or visits on National Forest Systems lands of two service days or less.

Example 1: A float plane company markets fishing trips to the National Forest, flies anglers to high mountain lakes, drops them off, and picks them up. The company has 175 passenger trips. In this example, the Regional Forester has established a short-stop rate of $2.00 per client for this service.

175 passenger trips × $2.00 = $350 fee for commercial use.

Example 2: A bus company markets fall foliage tours and sends out 50 bus trips per season with 35 paying passengers. They stop at a National Forest Visitor Center for an average of 40 minutes. The Regional Forester

has established a short-stop rate of $2.00 per client.

35 people × 50 buses × $2.00 = $3,500 fee for commercial use.

37.21d—Determining Service Days. Count any full or fractional part of a day the client receives goods or services as a full service day.

1. When livery, rental, supply, or drop-off service to customers is provided, count only the day on which the outfitter or guide provides services or goods.

2. When the outfitter or guide provides drop-off and pick-up service on two separate days, count one service day for drop-off and one service day for pick-up.

3. When the outfitter or guide provides drop-off and pick-up service and the clients occupy an outfitter's assigned site and/or the outfitter or guide furnishes equipment and supplies, count one service day for drop-off, one service day for pick-up, and one service day for each day in between.

37.21e—Adjustment for Use off National Forest System Lands. Reduce the fee or estimated fee if the outfitter or guide's clients occupy National Forest System lands for 60 percent or less of the duration of the outfitted or guided trip according to the schedule in paragraph 1. When days are the unit of measure, at least one entire day must be off National Forest System lands to qualify for the adjustment. Other units of measure besides days may be used where equitable to calculate the percentage on and off National Forest System lands. For example, trail distance may be used at Nordic centers.

1. Apply the following schedule in calculating adjustments for use off National Forest System lands:

SCHEDULE OF FEE REDUCTION FOR USE OFF NFS LANDS

Percentage on NFS Lands	Fee reduction
Less than 5 percent	80 percent.
5 to 60 percent	40 percent.
Over 60 percent	None.

Request the holder to provide documentation of the duration of trips, such as the itineraries for outfitted or guided trips, to support a request for a fee reduction based on use off National Forest System lands.

2. When use off National Forest System lands occurs on lands administered by another Federal agency and the holder is authorized by that agency, coordinate the fee calculations so that overcharges do not occur.

Example: An outfitter conducts a 10-day trip with 8 clients; 5 days are spent on NFS lands and 5 on Bureau of Land Management (BLM) lands. Assume the fee for the trip would be $100 if all 10 days were on either NFS or BLM lands. Coordinate with the BLM to charge the outfitter $100, and split the fee equitably between the two agencies. Do not adjust for use off NFS lands which would result in a higher fee of $120 ($60 for the Forest Service and $60 for the BLM).

37.21f—Fee for Additional Use. If the holder requests advance approval of additional use and if capacity is available, the authorized officer may approve the request and collect any additional estimated fees. When option A (sec. 37.21c, para. 1) is used to calculate the fee for commercial use, use the schedule of rates to calculate the additional fee. When option B (sec. 37.21c, para. 2) is used to calculate the fee for commercial use, estimate the additional adjusted gross revenue associated with the approved additional use, and include it in the calculation of the estimated and final fees (sec. 37.22 and 37.23). See sections 41.53g and 41.53h for additional direction.

37.21q—Payment for Unapproved Non-Use. Charge the holder for unapproved non-use when the holder does not properly request and receive a waiver for authorized use (see sec. 41.53h, para. 4). Add the amount calculated for unapproved non-use to the final fee total. This provision applies to calculation of the fee under option A or B.

37.21h—Fee for Assigned Sites.

1. The minimum annual fee for each assigned site is $140.

2. Using 1993 as a base year, the Washington Office Director of Recreation, Heritage, and Wilderness Resources Management adjusts the minimum annual fee (in para. 1) that applies to each assigned site every three years based on the Gross Domestic Product-Implicit Price Deflator Index (sec. 37.04). The assigned site fee is in addition to the minimum permit fee and other mandatory fees for commercial outfitting and guiding (sec. 37.21c).

3. The Regional Forester may establish higher fees if necessary to obtain fair market value.

4. Authorized officers may not prorate assigned site fees. Apply the full annual fee for each assigned site.

5. Authorized officers may not authorize refunds or credits for assigned site fees.

37.21i—Fee for Grazing Livestock. Assess livestock grazing fees when the Forest Service authorizes the holder to graze animals used for transport on National Forest System lands. Do not assess a grazing fee when the animals travel on National Forest System lands but the holder is not authorized to graze them. Charge grazing fees in accordance with direction in FSM 2238. Do not authorize refunds or credits for authorized but unused grazing use.

37.21j—Fee for Nonprofit Organizations. The fee for nonprofit organizations is three percent of annual adjusted gross revenue (option B, sec. 37.21c, para. 2). Include the amount of donations and grants as gross revenue if the holder requires the customer or client to make a donation or grant as a condition of receiving the service. Do not consider donations or grants made voluntarily by customers to support the programs or activities of the holder.

37.21k—Fee for Educational Institutions. The fee is three percent of annual adjusted gross revenue (option B, sec. 37.21c, para. 2).

1. *Credited Programs.* Exclude tuition and other payments made by students which are unrelated to the use of National Forest System lands authorized for outfitting and guiding purposes if the program provided under the permit is recognized for credit toward graduation or a degree in a recognized school system or accredited educational institution.

2. *Non-Credited Programs.* Include all payments made by students for authorized outfitting and guiding services if the program provided under the permit is not recognized for credit toward graduation or a degree in a recognized school system or accredited educational institution.

37.22—Estimate Fee.

1. Consult with the applicant or holder to estimate the anticipated number of service days and adjusted gross revenue. Use financial and related documents furnished by the applicant or holder, including records of the previous year's business activity, planned customer rate schedules, and itineraries. Retain documents used for fee calculations in the case folder.

2. Based on authorized use, calculate the total estimated annual fee, including the fee for commercial use, assigned site fee, and livestock grazing fee, on a fee determination statement (sec. 31.4) prior to the operating season.

3. Establish payment due dates prior to the start of the operating season for all payments.

4. Calculate the total estimated fee as a single amount, and collect the fee from the holder as follows:

a. Collect the total annual estimated fee in advance when it is less than $500.

b. Collect half of the total annual estimated fee in advance and the remainder by mid-season when the total

is equal to or greater than $500, but less than $2,500.

c. Collect one-third of the total annual estimated fee in advance and the remainder in two equal payments by mid-season when the total is $2,500 or more.

d. Deposit fees collected to the Land and Water Conservation Fund (FSM 6530).

37.23—Fee for Commercial Use. Record in the holder's operating plan the date established by the authorized officer and the holder by which the holder must submit financial records and records of use required to calculate the fee for commercial use.

In calculating the fee for commercial use, follow the procedure described in section 37.22, paragraph 1. Use financial records and records of use appropriate for the fee option selected (sec. 37.21c).

37.24—Billing and Refunds. Calculate the fee for commercial use and adjust for use off National Forest System lands, if applicable. Charge the holder for any unapproved non-use. Charge the holder for any unauthorized use.

1. When the final fee exceeds the paid estimated fee, bill the holder for the balance due.

2. When the final fee is less than the paid estimated fee and more than the minimum fee, refund the difference to the holder. If the holder is authorized to operate with a priority use assignment, at the holder's request credit the overpayment toward the next year's fee. If the holder is authorized to operate with a priority use assignment and the authorization is due to expire that year, refund the difference to the holder.

Follow billing and refund procedures found in FSH 6509.11k. Under the authority of the Land and Water Conservation Fund Act of 1964 (16 U.S.C. 460*l*–6a (c) and (i)(1)), deposit fees into the Land and Water Conservation Fund (FSM 6530).

Chapter 40—Special Uses Administration

41.53—Outfitters and Guides. (For related authorities, policies responsibilities, and definitions, see FSM 2340 and FSM 2701–2705. Direction on fees for outfitters and guides is in section 37 of this Handbook). Administer permits for outfitters and guides operating on National Forest System lands in accordance with the direction in sections 41.53a through 41.531. Outfitting and guiding services include but are not limited to packing, hunts, float trips, canoe or horse liveries, ski touring, helicopter skiing, jeep tours, boat tours, and fishing trips.

41.53a—Objectives.

1. As identified in forest and resource management plans, provide for commercial outfitting and guiding services that address concerns of public health and safety and that foster small businesses.

2. Encourage skilled and experienced individuals and entities to conduct outfitting and guiding activities in a manner that protects environmental resources and ensures that National Forest visitors receive high quality services.

41.53b—Policy. (FSM 2340.3, 2703).

1. Authorize only those outfitting and guiding activities that are consistent with forest land and resource management plans.

2. Do not authorize any development or permanent improvements on the National Forest System for outfitting and guiding services, except for temporary structures or improvements or installations with negligible value, such as hitching posts, corrals, tent frames, and shelters.

3. Do not authorize any development, improvement, or installation in wilderness for the purpose of convenience to the holder or the holder's clients. The authorized officer may authorize temporary structures, improvements, or installations in wilderness only when necessary to meet minimum requirements for administration of the area for the purposes of the Wilderness Act (16 U.S.C. 1121 (note)).

4. Work with other Federal agencies, State and local authorities, outfitters, and outfitter and guide organizations to ensure that outfitting and guiding activities are consistent with applicable laws and regulations and to identify unauthorized outfitting and guiding activities. Follow procedures in FSM 5300 in investigating and taking action to prevent the occurrence of unauthorized outfitting and guiding activities.

5. Do not issue a separate permit for outfitting or guiding activities (such as cross-country skiing and horseback riding) to a holder of a permit or term permit for a commercial public service site (such as a pack station, lodge, or resort) when the outfitting or guiding operations are part of commercial public service site operations. Include the outfitting and guiding activities in the commercial service site's annual operating plan. Attach the annual operating plan to the commercial service site permit or term permit and consider it part of the permit or term permit. See section 37.03 for related direction on fees.

41.53c—Definitions. See section 37.05 for additional related definitions for ''adjusted gross revenue,'' ''adjustment for use off National Forest System lands,'' ''assigned site,'' ''average client-day charge,'' ''client days,'' ''duration of the outfitted or guided trip,'' ''non-use,'' ''revenue additions,'' ''revenue exclusions,'' ''service day,'' ''short-stop fee,'' and ''unapproved non-use.''

Guiding. Providing services or assistance (such as supervision, protection, education, training, packing, touring, subsistence, interpretation, or other assistance to individuals or groups in their pursuit of a natural resource-based outdoor activity) for pecuniary remuneration or other gain. The term ''guide'' includes the holder's employees, agents, and instructors.

Holder. An applicant who has received a special use authorization to conduct outfitting or guiding activities.

Incidental Use. Annual use that is proposed to be 50 service days or less and is anticipated to have little or no significant impact on public health and safety, the environment, or other authorized uses and activities.

Outfitting. Providing through rental or livery any saddle or pack animal, vehicle or boat, tents or camp gear, or similar supplies or equipment, for pecuniary remuneration or other gain. The term ''outfitter'' includes the holder's employees, agents, and instructors.

Priority Use. Authorization of use for a period not to exceed five years. The amount of use is based on the holder's past use and performance and on forest land and resource management plan allocations. Authorizations providing for priority use are subject to renewal (sec. 41.53f).

Renewal. The issuance of a new special use authorization for the same use to the same holder upon the expiration of the holder's current authorization.

Temporary Use. An amount of use assigned the holder of a permit with a period of one season or less.

Transportation Livestock. Pack and saddle animals authorized in connection with an outfitter or guide permit and expressed in animal months and by class of animal (FSM 2234.11).

41.53d—When Permits Are Required.

1. Individuals or organizations conducting outfitting or guiding activities on National Forest System lands must have a permit unless the authorized officer (FSM 2705) issues a Temporary Special-Use Permit (Form FS–2700–25) for incidental use (sec. 41.53e).

2. Outfitters based off National Forest System lands who rent and deliver equipment or livestock to the public on National Forest System lands must obtain a permit if they, their employees, or agents occupy or use National Forest

System lands or related waters in connection with their rental programs. For example, a permit is required if a boat livery operator provides service, including delivery or pickup of boats, at sites on National Forest System lands. No permit is necessary nor is a fee charged if an operator's customers transport rented equipment to and from the National Forest System lands or if an operation serves Forest Service employees, Forest Service contractors, or other Federal officials in the course of their official duties.

41.53e—Incidental Use. When the proposed annual use is 50 service days or less and is expected to have little or no impact on public health and safety, the environment, or other authorized uses and activities on National Forest System lands, the use may be authorized by a temporary permit, Form FS–2700–25, Temporary Special-Use Permit. The following activities and uses shall not be authorized by a temporary permit and shall be authorized only by Form FS–2700–4, Special Use Permit: white water travel, use of firearms, livestock, or aircraft, or all-terrain and off-highway vehicle travel.

41.53f—Applications and Issuance of Permits.

1. *Applications.* Provide outfitter and guide applicants with Form FS–2700–3, Special Use Application and Report, to specify the services to be performed, the number of service days, the lands to be occupied, modes of transportation, season of use, scheduling, and other matters relating to the applicant's operation. Application and authorization procedures established in 36 CFR 251.54 and FSM 2712 are fully applicable to outfitter and guide applications. See FSM 2712.2 for direction regarding prospectuses for new opportunities as described in paragraphs 2a through 2d of this section.

Conduct environmental analyses for outfitter and guide applications in accordance with procedures in FSH 1909.15, National Environmental Policy Act Handbook.

2. *Issuance.* Outfitting and guiding permits may be issued when one or more of the following occurs:

a. An increased allocation, capacity, or public need is identified through the forest planning process;

b. An existing permit is revoked;

c. A reduction of service days by an existing holder or holders makes additional service days available;

d. Competitive interest in an area, unit, or activity arises where no previously authorized use exists and where the proposed use is compatible with objectives in forest land and resource management plans;

e. An application has been submitted to provide outfitter and guide services for an area or activity that has not previously been authorized and for which there is no competitive interest; or

f. An existing permit terminates.

For situations fitting the criteria in the preceding paragraphs 2a through 2d, solicit applicants by issuing a prospectus and contacting all parties who have expressed an interest. See FSM 2712.2 for additional direction on issuing a prospectus.

For an application fitting the criteria in the preceding paragraph 2e, document the determination of no competitive interest and then issue a permit to the qualified applicant. In issuing the permit, classify authorized use as temporary use until the holder has performed acceptably for at least two consecutive years.

When determining the most qualified applicants, consider past experience and knowledge of the area, financial capability, economic viability of existing holders, performance record, return to the Government, and other factors. The authorized officer may classify the use as priority if the selected applicant has a two-year record of acceptable performance as a holder of a permit for an outfitting and guiding operation similar to the proposed use. Process requests to expand a current holder's operations as an application for temporary use under section 41.53g. For a selected applicant with no previous record, classify the use as temporary.

Issue temporary permits and permits under the authority of the Land and Water Conservation Fund Act of September 3, 1964 (16 U.S.C. 460*l*–6a(c)), on Form FS–2700–25, Temporary Special-Use Permit, and on Form FS–2700–4, Special-Use Permit, respectively.

3. *Renewal without Competition.* When a permit of a holder assigned priority use terminates (preceding para. 2f) the permit is subject to renewal without competition, provided the current holder has performed satisfactorily as demonstrated by acceptable annual performance inspections. Renewal shall be at the sole discretion of the authorized officer and shall be in accordance with 36 CFR 251.64. In renewing the permit, the authorized officer may modify the terms and conditions of the permit.

4. *Change of Ownership or Control of Business Entity.*

a. Upon notification by the holder that a change in ownership of or a controlling interest in the business entity is being considered, the authorized officer shall inform the holder of the following:

(1) The permit is a privilege and is not transferable, either upon the sale of the business entity or the sale of a controlling interest in the business entity;

(2) Priority use is a privilege acquired by demonstrated acceptable performance and is not transferable;

(3) The permit is not real property, does not convey any interest in real property, and may not be used as collateral;

(4) Upon consummation of a change of ownership of or controlling interest in the business entity, the holder's permit terminates; and

(5) The party who acquires ownership of or a controlling interest in the business entity may be issued a permit if the authorized officer determines that the prospective holder meets Forest Service requirements, including financial and technical capability.

b. The authorized officer shall inform the holder to submit Form FS–2700–3a, Request for Termination of an Application for Special-Use Permit, for relinquishment of the permit.

c. The authorized officer shall inform the party who acquires ownership of or a controlling interest in the business entity to submit:

(1) An application for a permit on Form FS–2700–3, Special Use Application and Report; and

(2) Documentation of change of ownership, including properly executed documents showing a bona fide conveyance of the equipment or other assets previously used by the business, and for businesses based on private land, properly executed documents showing a bona fide conveyance of the real and personal property used by the business; or

(3) Documentation of a change of control, including properly executed documents showing a bona fide change of a controlling interest in the business entity.

d. If the change of ownership or control is not consummated and the original holder has relinquished the permit, the authorized officer may reissue the permit to the original holder. Prior to reissuance, the authorized officer must request the original holder to submit documentation establishing ownership or control of the business entity.

41.53q—Assignment and Management of Temporary Use.

1. *Eligibility.* All qualified applicants, including institutional and semi-public entities and holders of permits assigned priority use, are eligible to receive

temporary use assignments. Current holders assigned priority use and proposing to expand their use may also submit an application. Approved additional use may be assigned as temporary use.

2. *Assignment of Temporary Use*. If capacity is available, temporary use may be authorized if the need for the use exists and the use is consistent with the forest land and resource management plans (FSM 1920). If forest land and resource management plans do not address the use and/or capacity levels, assignments shall be at the discretion of the authorized officer subject to the requirements of the National Environmental Policy Act (FSH 1909.15). A temporary use assignment does not commit the Forest Service to authorizing that use for a similar number of service days in the future.

3. *Conversion to Priority Use*. A holder authorized for at least two years may be eligible for assignment of priority use if it is in the best interest of the Forest Service and the use is compatible with forest land and resource management plans. Assignment of priority use shall be based on documented acceptable performance by the holder for two consecutive years. The amount of use authorized may be based on the previous two-year average authorized use which was actually used. See section 41.53h, paragraph 2, for limitations on assignment of priority use.

41.53h—Assignment and Management of Priority Use.

1. *Eligibility*. Previously authorized outfitters or guides who have made their services available to all members of the public and who have performed acceptably for the previous two consecutive years may be eligible for assignment of priority use.

Outfitters or guides who provide services only to private or restricted clientele are not eligible for assignment of priority use. See section 41.531 for additional direction on semi-public outfitting and guiding.

2. *Assignment of Priority Use*. Assignment of priority use shall be at the discretion of the authorized officer and shall be consistent with forest land and resource management plans. Base any assignment of priority use on the capacity of the area or standards and guidelines as established in forest land and resource management plans.

a. Use may be based on the average of the highest two years of actual use authorized use which was actually used during the previous five years.

b. Record the following on the permit:

(1) The amount of authorized use in terms of service days, season, months, weeks, people-at-one-time (PAOT), or similar time factors that may apply;

(2) The nature of the authorized service or activity (such as big game hunting, white water rafting, or fishing trips);

(3) The resource area (such as wilderness, river, or administrative unit) within which the service or activity is to be authorized; and

(4) The various modes of transportation to be used and other factors necessary to define the quality and scope of the activity.

3. *Management of Priority Use*.

a. Establish use in terms of service days. Where recreation use levels are planned and managed in terms of launches and people per launch, camps and people per camp, or trips and people per trip, specify numbers of launches, campsites, and/or trips authorized for those service days.

b. When a permit is about to terminate and the holder has applied for renewal of the permit, the assignment of priority use for the new permit shall be at the discretion of the authorized officer and shall be consistent with forest land and resource management plans. Consider general market and other economic fluctuations, availability of state hunting licenses, and natural phenomena which may have adversely affected the ability of the holder to utilize the authorized use fully. The authorized officer may assign priority use consistent with the level of use utilized effectively under the former permit. If capacity is available and environmental analyses have been completed, authorize the amount of additional use that has been effectively used during the temporary use period. Base the amount of use recorded in the new permit as described in the preceding paragraph 2b(2). Reduce the authorized use if the holder has utilized less than 70 percent of the assigned amount in each of three consecutive years. Make no reductions in use assignment if non-use was approved by the authorized officer in accordance with the following paragraph 4.

4. *Approved Non-Use*. Prior to allowing the holder to operate, the authorized officer must review and approve a holder's annual proposed itinerary and requests for amendments to an operating plan. Any deviations from the assigned amount of use (referred to as ''approved non-use'') must be approved by the authorized officer. The authorized officer must document the basis for approving non-use and provide a copy to the holder. The holder is not responsible for fee payment on approved non-use.

Non-use may be approved:

a. To protect natural resources, to address concerns of public health and safety, or to prevent conflicts with other authorized uses of National Forest System lands; or

b. When requested by a holder far enough in advance to allow the authorized officer to reassign the approved non-use to other holders, if appropriate.

41.53i—Reduction of Use or Service Days. See section 41.53h, paragraph 3b, for additional direction on calculating reductions.

1. Amendments to or revisions of forest land and resource management plans may establish a level of outfitting and guiding that could result in a reduction of a holder's use or service days. When considering renewal of the permit, the authorized officer has three options:

a. Request holder(s) to reduce use voluntarily;

b. Proportionally reduce use for holders; or

c. Reassign the amount of use through solicitation of applications by issuing a prospectus. Limit solicitation to current holders who are assigned priority use. Base assignment of use on services proposed and performance. When reassigning use or service days, consider the holder's performance, experience and knowledge of the area, financial capability, performance record, return to the Government, economic viability of other holders, and other appropriate factors.

41.53j—Permit Terms and Conditions.

1. For new applicants, authorize use for periods not to exceed one year. For holders who are assigned priority use, a period of up to five years may be authorized. To the extent possible, issue permits with a length coinciding with time periods in forest land and resource management plans, as appropriate.

2. For applicants who have a limited record or no record of performance, a one-year permit subject to a conditional one-year renewal may be issued to provide a performance evaluation period. Renew the use and amend the permit term, unless the permit is revoked after the first year under section 41.53k, paragraph 1e(2).

3. Use the standard mandatory clauses for outfitter and guide service as defined in section 52. Include standard clauses from section 53 as appropriate.

4. Enter the total number of service days in each use category on the permit. Specify in the permit, operating plans, and annual itineraries all of the various modes of transportation authorized.

Show amounts and class of use. If applicable, enter the number of launches and people per launch, camps and people per camp, or trips and people per trip associated with the use.

5. Require an annual operating plan for the period of the permit and approval of an annual itinerary as a provision of the permit.

6. Indicate in the permit the amount of livestock used for transportation of people and equipment in connection with the activity, and specify if the livestock may graze. Do not issue a separate livestock use permit. Include a clause that requires the holder to record and report the amount of livestock grazing use that will actually occur with the outfitting or guiding use. Report livestock grazing use in the Annual Grazing Statistical Report (Report FS–2200–j). Do not report occupancy by animals that were not authorized to graze.

7. Specify and describe proposed use of specific assigned sites in operating plans and annual itineraries.

8. Allow holders to choose one of two alternative fee systems based on FSH 2709.11, section 37.21c (option A or B).

9. Require holders to provide accurate information through an actual use report within 30 days of the close of the operating season.

10. Require holders to maintain accounting records in accordance with generally accepted accounting principles or other comprehensive bases of accounting, to make those records available to the Forest Service for review, and to retain them for at least five years.

11. The holder may be required to have public liability insurance under FSM 2713.32. The holder's insurance must name the United States Government as an additional insured.

41.54k—Permit Administration.

1. *Performance Review and Evaluation.* Monitor authorized operations to verify compliance with permit terms and conditions during the season of use. Assignment of priority use depends on documentation of satisfactory performance. More frequent reviews may be necessary to achieve compliance with the permit terms and conditions. Conduct a mid-season performance review and evaluation of the holder's operations. See FSM 2716.5 for additional direction.

a. *Performance Standards.* Forest Supervisors shall develop specific performance standards for inclusion in each permit and/or operating plan in consultation with District Rangers and individual holders, outfitter and guide licensing agencies, advisory councils, and other State and Federal land management agencies. At a minimum, Forest Supervisors shall develop specific standards for the degree of compliance with terms of the permit and operating plans and itineraries, customer satisfaction, and protection of natural resources.

b. *Performance Ratings.* Evaluate the holder's overall performance using three performance ratings: Acceptable, Probationary, and Unacceptable. Base these ratings on the specific performance standards included in the holder's permit and/or operating plan.

c. *Mid-Season Review and Evaluation.* Conduct a mid-season review and evaluation of all holders. Notify the holder in writing of the results of this mid-season review and evaluation. Include:

(1) Any deficiencies or items of noncompliance; and

(2) A time frame for remedying deficiencies and correcting noncompliance.

d. *Second Review and Evaluation.* Conduct a second review and evaluation at the end of each operating season if the mid-season review and evaluation disclose deficiencies or items of noncompliance that would substantiate a rating of Unacceptable, or in the case of holders assigned priority use, a rating of Unacceptable or Probationary. Notify the holder in writing of the results of this second review and evaluation. Include:

(1) Any deficiencies or items of noncompliance identified at mid-season and not remedied or corrected; and

(2) Any deficiencies or items of noncompliance identified during the second review.

e. *Annual Ratings.* Rate every holder at the end of the operating season. Provide the holder with a copy of the rating, and include notification of the holder's right to appeal.

(1) *Holders Assigned Priority Use.*

(a) If a holder receives an annual rating of Probationary at the end of the permit year, reduce the term of the permit to no more than one additional year. If at the end of that period the holder receives an annual rating of Probationary or Unacceptable, the authorized officer shall not renew the permit and shall allow the permit to terminate. If at the end of the additional year the holder receives an annual rating of Acceptable, the holder may again be assigned priority use, and the permit is subject to renewal under section 41.53f, paragraph 2f.

(b) If a holder receives an annual rating of Unacceptable, the permit shall be revoked. In the case of a permit that is about to expire, it shall be allowed to terminate.

(c) Holders may appeal final ratings of Probationary and Unacceptable under applicable Federal regulations. Termination of a permit is not subject to appeal.

(2) *Holders Not Assigned Priority Use.*

(a) If a holder receives an annual rating of Acceptable at the end of the permit year, the authorized officer may renew the permit for no more than one additional year. If at the end of that period the holder receives an annual rating of Acceptable then the holder may be eligible for assignment of priority use. See section 41.53g for additional direction on conversion to priority use.

(b) If a holder receives an annual rating of Unacceptable, the permit shall be revoked or allowed to terminate.

(c) Holders may appeal an annual rating of Unacceptable under applicable Federal regulations. Termination of a permit is not subject to appeal.

2. *Assignment of Use.* Do not approve requests to assign all or part of the authorized use to others. If a holder is unable or unwilling to provide the services authorized by the permit, revoke the permit or reduce the authorized use. If appropriate, assign the amount of use to others in accordance with section 41.53h.

41.531—Permits for Institutional and Semi-Public Outfitting and Guiding. Permits may be issued to institutional and semi-public outfitting and guiding applicants consistent with forest land and resource management plan direction for commercial use and group size. Schedules and services may fluctuate from season to season or year to year. Applicants may include a variety of membership or limited-constituency institutions, such as religious, conservation, youth, fraternal, service club, and social groups; educational institutions, such as schools, colleges and universities; and similar common interest organizations and associations. This category may also include applicants who operate commercially on a limited or intermittent basis in providing service to selected customer clientele rather than to the public at large. Outfitting and guiding activities conducted by institutional or semi-public groups may be authorized regardless of whether a fee or other consideration is collected from participants.

1. Issue permits when the use furthers the public interest and can be accommodated without causing unacceptable resource impacts or conflicts with other authorized users. The authorized activities must be consistent with applicable laws, regulations, and forest land and

resource management plans. See 36 CFR Part 251, Subpart B, for additional requirements on when a permit is required.

2. Ensure that applicants demonstrate financial and technical capability to meet the terms and conditions of the permit.

3. Issue a temporary permit, Form FS–2700–25, Temporary Special-Use Permit, if the permit period is for one year or less, such as for a single trip. See section 41.53e for direction on incidental use.

4. Do not assign priority use to holders of permits for institutional or semi-public outfitting and guiding.

5. Require an operating plan for permits issued for continuing intermittent use. An operating plan may also be necessary for single-trip permits to ensure public safety and resource protection, depending on the nature and scope of the trip.

6. Document performance evaluation as described in section 41.53k is optional.

7. Determine fees and fee waivers based on chapter 30 of this Handbook.

[FR Doc. 95–14361 Filed 6–9–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060595E]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit no. 959 (P418A).

SUMMARY: Notice is hereby given that Mason T. Weinrich, Cetacean Research Unit, Gloucester, MA 01930, has been issued a permit to take humpback whales (*Megaptera novaeangliae*), fin whales (*Balaenoptera physalus*), right whales (*Eubalaena borealis*), and sei whales (*Balaenoptera glacialis*) for the purpose of scientific research.

DATES: Written comments or requests for a public hearing must be received on or before July 12, 1995.

ADDRESSES: The permit is available for review by interested persons in the following offices by appointment:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, (508/281–9150); and

Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/570–5312).

FOR FURTHER INFORMATION CONTACT: Kellie Foster (301/713–1401).

SUPPLEMENTARY INFORMATION: On March 16, 1995, notice was published in the **Federal Register** (60 FR 14270) that a permit had been requested by the above-named individual. The requested permit has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the Regulations Governing the Taking, Importing, and Exporting of Endangered Species (50 CFR part 222).

The permit authorized the holder to take 400 humpback whales (*Megaptera novaeangliae*), 250 fin whales (*Balaenoptera physalus*), 50 right whales (*Eubalaena borealis*), and 50 sei whales (*Balaenoptera borealis*) per year for 5 years for the purpose of photo-identification and behavioral studies.

Issuance of this permit, as required by the ESA, 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 that is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 6, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–14354 Filed 6–9–95; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION ON PROTECTING AND REDUCING GOVERNMENT SECRECY

Notice of Meeting

This notice announces the third in a series of monthly meetings of the Commission on Protecting and Reducing Government Secrecy. Pursuant to Title IX of Pub. Law 103–236, dated April 30, 1994, the Commission consists of twelve members, four appointed by the President, two each by the Speaker of the House and the House Minority Leader and two each by the Senate Majority and Minority Leaders. The Commission will remain in effect for two years from the date of its first meeting.

Time and Date: 2:00 P.M., June 20, 1995.

Place: S–116, Committee on Foreign Relations Hearing Room, The Capitol.

Status: Open.

Agenda: Overview of classification and declassification policies; speakers from the National Archives and Records Administration and the Congressional Research Service.

Contact Person for More Information: Eric Biel, Staff Director, Commission on Protecting and Reducing Government Secrecy, (202) 857–0002; FAX: (202 457–0128.

Eric Biel,

Staff Director, Commission on Protecting and Reducing Government Secrecy.

[FR Doc. 95–14307 Filed 6–9–95; 8:45 am]

BILLING CODE 6820–ER–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 6, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: June 8, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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) 927–6704. 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 during the July 1, 1994 through December 31, 1994 period.

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 59 FR 65531, published on December 20, 1994). Also see 60 FR 17325, published on April 5, 1995.

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 Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 6, 1995.

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 March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on June 8, 1995, you are directed to amend the directive dated March 30, 1995 to reduce the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
336/636	476,316 dozen.
341	682,095 dozen.
351/651	368,577 dozen.
433	9,480 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

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,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–14296 Filed 6–9–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice Concerning the Idaho Training Range

The Air Force has determined that it will no longer pursue the Idaho Training Range as proposed by the State of Idaho. Accordingly, the Air Force has terminated work on its environmental impact statement (EIS) for the Idaho Training Range. The EIS was being prepared to consider the State of Idaho's proposal for a state-owned tactical training range to be used by the Air Force and the Air National Guard

The Air Force has committed to working with the State, the Department of Interior, the Shoshone-Paiute Tribes and others to try to identify other tactical training opportunities in Idaho. There are no proposals at this time. Should a new, mutually agreeable proposal be developed, it would be announced and the Air Force would begin a comprehensive environmental analysis of it in accordance with the National Environmental Policy Act.

Passy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–14454 Filed 6–9–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Navy

Naval Research Advisory Committee; Closed Meetings

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Special Study Panel to Review the Department of the Navy Science and Technology Program will meet on June 19 and 20, and August 14 and 15, 1995. The meeting on June 19 will be held at the Pentagon, Arlington, Virginia; the meeting on June 20 will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting on August 14 and 15 will be held at the Pentagon, Arlington, Virginia. The meeting will commence at 9 a.m. and terminate at 5 p.m. on June 19; commence at 9 a.m. and terminate at 3 p.m. on June 20; and commence at 9 a.m. and terminate at 4 p.m. on August 14 and 15, 1995. All sessions of the meetings will be closed to the public.

The purpose of the meetings is to provide an assessment of the Department of the Navy Science and Technology Program, make recommendations on how to best posture the Department to be a world class customer of science and technology innovation, and determine whether the Department's execution philosophy and management structure allow for the most effective utilization of innovation. The agenda will include briefings and discussions on perspectives from internal Department of the Navy sources, as well as the Joint Chiefs of Staff, the Office of the Secretary of Defense, the Department of the Air Force, the Department of the Army, and the Advanced Research Projects Agency. These briefings and discussions will involve sensitive Department of Defense information. Premature public disclosure of this information would be likely to significantly frustrate proposed agency action. The information involved is specifically authorized under criteria established by Executive order to be withheld from the public if the agency determines it to be in their best interest. The sensitive matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meetings. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meetings be closed to the public because they will be concerned with matters listed in section 552b(c)(9)(B) of title 5, United States Code.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning these meetings contact: Ms. Diane Mason-Muir, Office of Naval Research, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, Telephone Number: (703) 696–6769.

Dated: June 6, 1995.

L. R. McNees,

LCDR, JAGC, USN Federal Register Liaison Officer.

[FR Doc. 95–14332 Filed 6–9–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Cooperative Agreement To Florida State University

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the

criteria set forth at 10 CFR 600.7(b)(2)(i)(A) and (B) to Florida State University (FSU), and FSU's Institute for Central and Eastern European Cooperative Environmental Research (ICEECER), both located in Tallahassee, Florida, under Cooperative Agreement Number DE–FC01–95EW55101. The DOE intends to make a noncompetitive financial assistance award. The purposes of the proposed cooperative agreement are to continue FSU's work in environmental research technology and development, which the DOE has funded for the previous five years, and to establish an identification and evaluation program of innovative environmental technologies on an international scale. This five-year effort will have a total estimated cost of $9,373,600.

DATES: Any comments or inquiries should be submitted by June 26, 1995.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Jeffrey R. Dulberg, HR–561.22, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed cooperative agreement will provide funding to FSU to continue its previous work focusing on both domestic U.S. and international environmental technology research and development and to establish a comprehensive program of identification and evaluation of innovative technologies. This program will encompass those technologies that are either currently being utilized in remediation efforts conducted by, or in development by, the DOE, other Federal agencies, State agencies, and private organizations. This program will also assist in the identification and evaluation of innovative technologies for environmental cleanup, which are under development by foreign scientists. ICEECER will conduct and participate in international symposia, conferences, workshops, and other meetings, which will serve as vehicles for identifying and evaluating these innovative environmental restoration technologies. The term of the project is planned to be five (5) years, commencing on June 30, 1995, and ending on June 29, 2000. The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by the DOE, and for which competition for support would have a significant adverse effect on continuity or completion of the activity. Without continuance of these worker safety studies funded by the DOE and which are still ongoing in Hungary, Poland, and throughout the former Soviet Union, the Government's investment to date would, in effect, be wasted, since the technologies being investigated are not yet mature enough for full scale implementation at U.S. cleanup sites. The activity is being conducted by the applicant using its own resources. FSU has invested its own resources in performing interdisciplinary research aimed at understanding and mitigating the effects that environmental pollutants have on human health and ecological systems. FSU has also invested its own resources in establishing critical links with academic institutions and private organizations in Central and Eastern Europe in the environmental technology field. By accelerating and significantly expanding FSU's current efforts, Departmental funding would enhance the public benefits to be derived. The DOE knows of no other entity which is conducting or is planning to conduct such an activity.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method and approach: to continue developing and testing advanced environmental technologies that could result in significant cost reductions and increased worker safety for cleanup projects in the U.S.; to perform interdisciplinary research aimed at understanding and mitigating the effects that environmental pollutants have on human health and ecological systems; to heighten public awareness concerning innovative technologies for managing radioactive wastes, hazardous wastes, and mixed wastes; and, to identify and evaluate innovative technologies for site characterization, monitoring, and restoration, as well as for waste management and the environmental consequences of energy production.

Issued in Washington, DC, on June 1, 1995.

Richard G. Lewis,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 95–14240 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Secretary of Energy Advisory Board; Amended Notice

AGENCY: Department of Energy.

ACTION: Notice of open meeting; Amended.

SUMMARY: This notice first appeared on June 1, 1995 (60 FR 28599). Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board
Date and Time: Important change Tuesday, June 13, 1995, 1 pm–4:15 pm
Place: New Location—National Press Club, Main Lounge, 14th and F Streets NW., Washington, D.C. 20045.

FOR FURTHER INFORMATION CONTACT: Peter F. Didisheim, Executive Director, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7092.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Secretary of Energy Advisory Board was established to serve as the Secretary of Energy's primary mechanism for long-range planning and analysis of major issues facing the Department of Energy. The Board will advise the Secretary on the research, development, energy and national defense responsibilities, activities, and operations of the Department and provide expert guidance in these areas to the Department.

Tentative Agenda

1:00 pm—Opening Remarks
1:15 pm—Task Force on Strategic Energy Research and Development—Final Report Presentation
1:45 pm—Discussion
2:15 pm—Break
2:30 pm—Overview of the Strategic Alignment of the Department of Energy
3:00 pm—Follow-On Activities of the Task Force on Alternative Futures for the DOE National Labs
3:30 pm—Discussion of Future Board Activities
4:00 pm—Public Comment
4:15 pm—Adjourn.

A final agenda will be available at the meeting.

Public Participation: The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C. the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Peter F. Didisheim, Executive Director, Secretary of Energy Advisory Board, AB–1, 1000 Independence Avenue, SW, Washington, DC 20585. In order to insure that Board members have the opportunity to review written comments prior to the meeting, comments should be received by Friday, June 9, 1995.

Minutes: Minutes and a transcript of the meeting will be available for public

review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays.

Issued at Washington, DC, on June 2, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–14239 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Idaho National Engineering Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Idaho National Engineering Laboratory.

DATES: Tuesday, June 20, 1995 from 8:00 a.m. Mountain Standard Time (MST) until 6:00 pm PST and Wednesday, June 21, 1995 from 8:00 a.m. MST until 5:00 p.m. MST. There will be a public comment availability session Tuesday, June 20, 1995 from 5 to 6 p.m. MST. A board member tour of four specific clean-up sites at the INEL is tentatively scheduled for Monday, June 19, 1995 from 8 am to 5 pm.

ADDRESSES: Shilo Inn, 780 Lindsay Blvd., Idaho Falls, ID 83402, (208) 523–1818.

FOR FURTHER INFORMATION CONTACT: Idaho National Engineering Laboratory Information 1–800–708–2680 or Marsha Hardy, Jason Associates Corporation Staff Support 1–208–522–1662.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Board will be developing a recommendation on the DOE-Owned Spent Nuclear Fuel Strategic Plan. They will be discussing and potentially making recommendations on projects underway in the INEL's Environmental Restoration Program. The Board will also select and adopt an action plan identifying their issues of study over the next year and hear presentations on spent nuclear fuel issues.

Tentative Agenda

June 20, 1995

7:30 a.m.—*Sign-in and Registration*
8:00 a.m.—Miscellaneous Business:
Old Business
- Deputy Designated Federal Officer Report
- Chair Report

Member Reports
Standing Committee Reports
- Public Communications

9:30 am—Discussion with EM-HQ
10:30 am—Break
10:45 am—DOE-Owned Spent Nuclear Fuel Strategic Plan
12:00 noon—Lunch
1:00 pm—Spent Nuclear Fuel
4:00 pm—Discussion with DOE-ID
5:00 pm—Public Comment Availability
6:00 pm—Adjourn

Wednesday, June 21, 1995

7:30 am—Sign-In and Registration
8:00 am—Miscellaneous Business
8:30 am—Environmental Restoration
10:00 am—Break
10:45 am—Environmental Restoration - continued
12:00 noon—Lunch
1:00 pm—Action Plan Development
3:00 pm—Break
3:15 pm—Action Plan Development - continued
4:15 pm—Meeting Evaluation
5:00 pm—Adjourn

A final agenda will be available at the meeting.

Public Comment Availability

The two-day meeting is open to the public, with a Public Comment Availability session scheduled for Tuesday, June 20, 1995 from 5 p.m. to 6 p.m. MST. The Board will be available during this time period to hear verbal public comments or to review any written public comments. If there are no members of the public wishing to comment or no written comments to review, the board will continue with it's current discussion. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Idaho National Engineering Laboratory Information line or Marsha Hardy, Jason Associates, at the addresses or telephone numbers listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays.

Issued at Washington, DC on June 7, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–14345 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Monticello Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Board Committee Meeting:

Environmental Management Site-Specific Advisory Board, Monticello Site

Date and Time: Tuesday, June 20, 1995 7 p.m.—8:30 p.m.

Address: Monticello City Hall, 17 North 1st East, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy, Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO, 81502 (303) 248–7727.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

The Environmental Management Site-Specific Advisory Board, Monticello Site, will be discussing reports from subcommittees on local training and hiring, health and safety, budget, future land use, and repository design.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda.

The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303)-248–7727.

Issued at Washington, DC on June 7, 1995

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–14346 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Pantex Plant

DATE AND TIME: Tuesday, June 27, 1995: 1:30 pm–6:00 pm

ADDRESS: Carson County Square House Museum, Panhandle, Texas.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3121.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Pantex Plant Citizens' Advisory Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

1:30 pm Welcome—Agenda Review—Introductions
Co-Chairs' Comments
2:00 pm Presentation
Resource Conservation & Recovery
2:30 pm Updates
- Occurrence Reports—DOE
- Agreement in Principle
- March fires and evaluation
- High explosives in well—sewage treatment plant
- Comments on Site Development Plan submittal

4:00 pm—Subcommittee Reports
- Budget and Finance
- Policy and Personnel
- Program and Training
- Community Outreach

5:00 pm—Task Force Reports
- Public Participation/Public Information

5:15 pm—Next Meetings
6:00 pm—Adjournment.

Public comment will be taken periodically throughout the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2 pm to 6 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9 am to 7 pm on Monday; 9 am to 5 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on June 7, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–14347 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL95–46–000, et al.]

Laidlaw Gas Recovery Systems, Inc., et al.; Electric Rate and Corporate Regulation Filings

June 2, 1995.

Take notice that the following filings have been made with the Commission:

1. Laidlaw Gas Recovery Systems, Inc., Coyote Canyon Landfill Gas Power Plant

[Docket No. EL95–46–000 and QF88–389–001]

Take notice that on May 22, 1995, Laidlaw Gas Recovery Systems, Inc. (Laidlaw), the operator and an owner of the Coyote Canyon Landfill Gas Power Plant (Coyote Canyon or Facility), a small power production qualifying facility (QF), filed a petition for declaratory order and request for expedited consideration. The Petitioner requests that the Commission issue a declaratory order stating that the use of fossil fuel by the Coyote Canyon Facility, in quantities less than 25 percent of the total energy input of the Facility during any calendar year, is consistent with Coyote Canyon's status as a qualifying facility pursuant to Commission regulations implementing Title II of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 USC 796 (1978).

Comment date: June 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power & Light Company

[Docket No. ER95–1036–000]

Take notice that on May 11, 1995, Wisconsin Power & Light Company (WP&L) tendered for filing an amended Wholesale Power Contract dated February 20, 1995, between the City of Brodhead and WP&L. WP&L states that this amended Wholesale Power Contract revises the previous agreement between the two parties dated December 10, 1990, and designated Rate Schedule Number 83 by the Commission.

The parties have amended the Wholesale Power Contract to add an

additional delivery point. Service under this amended Wholesale Power Contract will be in accordance with standard WP&L Rate Schedule W–3.

WP&L requests that an effective date concurrent with the contract effective date be assigned. WP&L states that copies of the amended Wholesale Power Contract and the filing have been provided to the City of Brodhead and the Public Service Commission of Wisconsin.

Comment date: June 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Power & Light Company

[Docket No. ER95–1037–000]

Take notice that on May 11, 1995, Wisconsin Power & Light Company (WP&L) tendered for filing a Power Supply Agreement dated February 9, 1995, between the Menominee Indian Tribe of Wisconsin and WP&L. This is a new customer and the Commission has not previously assigned a Rate Schedule to this customer.

The parties have executed this Power Supply Agreement in conjunction with the initiation of service to the Menominee Indian Tribe. Service under this Power Supply Agreement will be in accordance with standard WP&L Rate Schedule W–3.

WP&K requests that an effective date concurrent with the contract effective date be assigned. WP&L states that copies of the Power Supply Agreement and the filing have been provided to the Menominee Indian Tribe of Wisconsin and the Public Service Commission of Wisconsin.

Comment date: June 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER95–1055–000]

Take notice that on May 16, 1995, Florida Power & Light Company (FPL), tendered for filing revised Attachments A for the Stanton Transmission Servie Agreement between Florida Power & Light Company (FPL) and the Florida Municipal Power Agency (FMPA), the Tri-City Transmission Service Agreement between FPL and FMPA, and the Restated and Revised Transmission Service Agreement between FPL and FMPA. FPL requests that the changes be permitted to become effective on May 1, 1995. FPL states that this filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: June 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company

[Docket No. ER95–1076–000]

Take notice that on May 19, 1995, Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO) and West Texas Utilities Company (WTU), tendered for filing certain non-rate revisions to their respective Coordination Sales Tariffs (CST–1 Tariffs). To the expanded and new provisions clarify certain matters under the Commission-approved CST–1 Tariffs.

PSO, SWEPCO and WTU have asked for expedited consideration and waiver of the Commission's notice requirements to the extent necessary to permit an effective date of May 22, 1995. Copies of this filing were served on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the customers for whom PSO, SWEPCO and WTU, respectively have filed service agreements.

Comment date: June 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Citizens Utilities Company

[Docket No. ES95–34–000]

Take notice that on June 2, 1995, Citizens Utilities Company filed an application under section 204 of the Federal Power Act requesting an order authorizing the issuance, from time to time, of up to 31 million shares of Common Stock Series A and 13 million shares of Common Stock Series B as stock dividends on shares of its outstanding Common Stock, during a two-year period ending July 1, 1997.

7. Chicago Energy Exchange of Chicago, Inc.

[Docket Nos. ER90–225–020]

Take notice that on May 18, 1995, Chicago Energy Exchange of Chicago, Inc. (Energy Exchange), filed certain information as required by the Commission's April 19, 1990, order in Docket No. ER90–225–000. Copies of Energy Exchange's informational filing are on file with the Commission and are available for public inspection.

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, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 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. 95–14258 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1020–000, et al.]

Louisville Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

June 5, 1995.

Take notice that the following filings have been made with the Commission:

1. Louisville Gas and Electric Company

[Docket No. ER95–1020–000]

Take notice that on May 22, 1995, Louisville Gas and Electric Company, tendered for filing a copy of a service agreement between Louisville Gas and Electric Company and ENRON Power Marketing, Inc. under Rate GSS.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–1063–000]

Take notice that on May 18, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Stand Energy Corporation, dated May 15, 1995. This Service Agreement specifies that Stand Energy Corporation has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison*

Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU and Stand Energy Corporation to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of May 15, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER95–1064–000]

Take notice that on May 18, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Rainbow Energy Marketing Corporation, dated May 15, 1995. This Service Agreement specifies that Rainbow Energy Marketing Corporation has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co.,* Docket No. ER95–276–000 and allows GPU and Rainbow Energy Marketing Corporation to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of May 9, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER95–1066–000]

Take notice that on May 18, 1995, Wisconsin Public Service Corporation tendered for filing a contribution in aid of construction agreement with Wisconsin Power and Light Company to recover the costs of work required to connect a Wisconsin Public Service Corporation transmission line to a new Wisconsin Power and Light line to a new substation. WPSC respectfully requests that this agreement be accepted for filing and made effective 60 days after the filing date to allow the billing of the work.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER95–1070–000]

Take notice that on May 19, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Rainbow Energy Marketing Corporation (REM) dated May 18, 1995, providing for certain transmission services to REM.

Copies of this filing were served upon REM and the New York State Public Service Commission.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota Company)

[Docket No. ER95–1071–000]

Take notice that on May 19, 1995, Northern States Power Company (Minnesota) (NSP) tendered for filing a Distribution Facilities Agreement between NSP and the City of Arlington (City). NSP presently provides firm power service to the City pursuant to a Firm Power Service Resale Agreement dated August 2, 1983. The Commission has assigned Rate Schedule No. 421 to previously filed agreements between NSP and City. The Distribution Facilities Agreement will replace the distribution substation service portion of the Firm Power Service Resale Agreement and sets forth the terms and conditions and rates for service to City for the period July 1, 1995 to December 31, 1999.

Since distribution facilities are the subject matter of this Agreement, NSP requests the Commission waive jurisdiction. However, in the event the Commission determines the Agreement is subject to its jurisdiction, NSP requests the Distribution Facilities Agreement be accepted for filing effective July 1, 1995, and requests waiver of the Commission's notice requirements in order for the Distribution Facilities Agreement to be accepted for filing on the date requested.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota Company)

[Docket No. ER95–1072–000]

Take notice that on May 19, 1995, Northern States Power Company (Minnesota)(NSP), tendered for filing a Distribution Facilities Agreement between NSP and the City of Arlington (City). NSP presently provides firm power service to the City pursuant to a Firm Power Service Resale Agreement dated August 19, 1983. The Commission has assigned Rate Schedule No. 433 to previously filed agreements between NSP and City. The Distribution Facilities Agreement will replace the distribution substation service portion of the Firm Power Service Resale Agreement, and sets forth the terms and conditions and rates for service to City for the period July 1, 1995 to December 31, 1999.

Since distribution facilities are the subject matter of this Agreement NSP requests the Commission waive jurisdiction. However, in the event the Commission determines the Agreement is subject to its jurisdiction, NSP requests the Distribution Facilities Agreement be accepted for filing effective July 1, 1995, and requests waiver of the Commission's notice requirements in order for the Distribution Facilities Agreement to be accepted for filing on the date requested.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota Company)

[Docket No. ER95–1073–000]

Take notice that on May 19, 1995, Northern States Power Company (Minnesota) (NSP), tendered for filing a Distribution Facilities Agreement between NSP and the City of Brownton (City). NSP presently provides firm power service to the City pursuant to a Firm Power Service Resale Agreement dated August 19, 1983. The Commission has assigned Rate Schedule No. 422 to previously filed agreements between

NSP and City. The Distribution Facilities Agreement will replace the distribution substation service portion of the Firm Power Service Resale Agreement, and sets forth the terms and conditions and rates for service to City for the period July 1, 1995 to December 31, 1999.

Since distribution facilities are the subject matter of this Agreement, NSP requests the Commission waive jurisdiction. However, in the event the Commission determines the Agreement is subject to its jurisdiction, NSP requests the Distribution Facilities Agreement be accepted for filing effective July 1, 1995, and requests waiver of the Commission's notice requirements in order for the Distribution Facilities Agreement to be accepted for filing on the date requested.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER95–1079–000]

Take notice that on May 22, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the ''GPU Operating Companies''), filed an executed Service Agreement between GPU and Heartland Energy Services Inc., dated May 17, 1995. This Service Agreement specifies that Stand Energy Corporation has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (''Sales Tariff'') designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and Heartland Energy Services Inc. to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of May 17, 1995, for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: June 19, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Acme POSDEF Partners, L.P.

[Docket No. QF85–311–003]

On May 25, 1995, Acme POSDEF Partners, L.P. (Applicant), c/o James B. Vasile, Esquire, 1330 Connecticut Avenue NW., Washington, D.C. 20036, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.205(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to Applicant, the topping-cycle cogeneration facility is located in Stockton, California. The Commission previously certified the facility as a qualifying cogeneration facility in Cogeneration National Corporation, 38 FERC ¶62,259 (1987) and recertified the facility in *Acme POSDEF Partners, L.P.*, 63 FERC ¶63,127 (1993). The instant request for recertification is due to a change in ownership of the facility.

Comment date: Thirty days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protests 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 18 CFR 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. 95–14259 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 11534–000, et al.]

Hydroelectric Applications [Red River Water Commission, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 11534–000.

c. *Date Filed:* May 2, 1995.

d. *Applicant:* Red River Water Commission.

e. *Name of Project:* Red River Lock and Dam No. 1 Hydro Project.

f. *Location:* On the Red River, in Catahoula Parish, near Dunlap, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a). 825(r).

h. *Applicant Contact:* Mr. Ben M. Littlepage, 701 Highway 1 Bypass, P.O. Box 776, Natchitoches, LA 71458, (318) 352–7446.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* July 24, 1995.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Red River Lock and Dam No. 1 and consists of the following new facilities: (1) a powerhouse containing two 12.5–MW generating units for a total installed capacity of 25 MW; (2) a proposed tailrace; (3) a 34.5-kV or equivalent transmission line; and (4) appurtenant facilities. The average annual generation would be 100 GWh. The applicant estimates that the cost of the studies under the terms of the permit would be $400,000. All power generated would be sold to a local utility company. The project lock and dam is owned by the U.S. Army Corps of Engineers, Lower Mississippi Valley Office, P.O. 80, Vicksburg, MS 39180.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 11535–000.

c. *Date Filed:* May 2, 1995.

d. *Applicant:* Red River Water Commission.

e. *Name of Project:* Red River Lock and Dam No. 2 Hydro Project.

f. *Location:* On the Red River, in Rapides Parish, near Ruby, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a) 825(r).

h. *Applicant Contact:* Mr. Ben M. Littlepage, 701 Highway 1 Bypass, P.O. Box 776, Natchitoches, LA 71458, (318) 352–7446.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* July 24, 1995.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Red River Lock and Dam No. 2 and consists of the following new facilities: (1) a powerhouse containing three 10.5–MW generating units for a total installed capacity of 31.5 MW; (2) a new tailrace; (3) a 34.5-kV or equivalent transmission line; and (4) appurtenant facilities. The average annual generation would be 131 GWh. The applicant estimates that the cost of the studies under the terms of the permit would be $400,000. All power generated would be sold to a local utility company. The project lock and dam is owned by the U.S. Army Corps of Engineers, Lower Mississippi Valley Office, P.O. 80, Vicksburg, MS 39180.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3 a. *Type of Application*: Preliminary Permit.

b. *Project No.* 11536–000.

c. *Date Filed:* May 2, 1995.

d. *Applicant:* Red River Water Commission.

e. *Name of Project:* Red River Lock and Dam No. 3 Hydro Project.

f. *Location:* On the Red River, in Natchitoches Parish, near Colfax, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a) 825(r).

h. *Applicant Contact:* Mr. Ben M. Littlepage, 701 Highway 1 Bypass, P.O. Box 776, Natchitoches, LA 71458, (318) 352–7446.

i. *FERC Contact*: Ed Lee (202) 219–2809.

j. *Comment Date*: July 24, 1995.

k. *Description of Project*: The proposed project would utilize the U.S. Army Corps of Engineers' Red River Lock and Dam No. 3 and consists of the following new facilities: (1) a powerhouse containing three 20.5–MW generating units for a total installed capacity of 61.5 MW; (2) a new tailrace; (3) a 34.5-kV or equivalent transmission line; and (4) appurtenant facilities. The average annual generation would be 224 GWh. The applicant estimates that the cost of the studies under the terms of the permit would be $400,000. All power generated would be sold to a local utility company. The project lock and dam is owned by the U.S. Army Corps of Engineers, Lower Mississippi Valley Office, P.O. 80, Vicksburg, MS 39180.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4 a. *Type of Application*: Preliminary Permit.

b. *Project No.* 11537–000.

c. *Date Filed*: May 2, 1995.

d. *Applicant*: Red River Water Commission.

e. *Name of Project:* Red River Lock and Dam No. 4 Hydro Project.

f. *Location:* On the Red River, in Red River Parish, near Lake End, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ben M. Littlepage, 701 Highway 1 Bypass, P.O. Box 776, Natchitoches, LA 71458, (318) 352–7446.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* July 24, 1995.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Red River Lock and Dam No. 4 and consists of the following new facilities: (1) A powerhouse containing three 11–MW generating units for a total installed capacity of 33 MW; (2) a new tailrace; (3) a 34.5-kV or equivalent transmission line; and (4) appurtenant facilities. The average annual generation would be 152 GWh. The applicant estimates that the cost of the studies under the terms of the permit would be $400,000. All power generated would be sold to a local utility company. The project lock and dam is owned by the U.S. Army Corps of Engineers, Lower Mississippi Valley Office, P.O. 80, Vicksburg, MS 39180.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 11538–000.

c. *Date Filed:* May 2, 1995.

d. *Applicant:* Red River Water Commission.

e. *Name of Project:* Red River Lock and Dam No. 5 Hydro Project.

f. *Location:* On the Red River, in Caddo Parish, near Caspiana, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Ben M. Littlepage, 701 Highway 1 Bypass, P.O. Box 776, Natchitoches, LA 71458, (318) 352–7446.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* July 24, 1995.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Red River Lock and Dam No. 5 and consists of the following new facilities: (1) A powerhouse containing three 13.5-MW generating units for a total installed capacity of 40.5 MW; (2) a new tailrace; (3) a 13.2-kV or equivalent transmission line; and (4) appurtenant facilities. The average annual generation would be 174 GWh. The applicant estimates that the cost of the studies under the terms of the permit would be $400,000. All power generated would be sold to a local utility company. The project lock and dam is owned by the U.S. Army. Corps of Engineers, Lower Mississippi Valley Office, P.O. 80, Vicksburg, MS 39180.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. *Type of Application:* Application to Amend Article 404.

b. *Project No.* 9985–021.

c. *Date Filed:* March 31, 1995.

d. *Applicant:* Rivers Electric Company, Inc.

e. *Name of Project:* Mill Pond Project.

f. *Location:* Catskill Creek, Greene County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles R. Pepe, Rivers Electric Company, Inc., Old Quarry Road, P.O. Box 707, Alpine, NJ 07620, (201) 768–4040.

i. *FERC Contact:* Patti Pakkala, (202) 219–0025.

j. *Comment Date:* July 7, 1995.

k. *Description of Project:* Rivers Electric Company, Inc, licensee for the Mill Pond Project, requests approval of an amendment application to change the location of the recreation facilities required by Article 404 of the project license. The amendment request proposes to relocate project-related recreation facilities to leased lands outside the boundary of the Mill Pond Project. The licensee proposes this change given extensive safety concerns at the previously proposed location.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

7 a. *Type of Application:* Transfer of License.

b. *Project No.* 2973–073.

c. *Date Filed:* May 8, 1995.

d. *Applicant:* Island Park Hydro L.L.C.

e. *Name of Project:* Island Park Hydroelectric.

f. *Location:* Henrys Fork, Snake River, Fremont County, Idaho, near Ashton.

g. *Filed Pursuant to:* Federal Power Act, §§ 791(a)–825(r).

h. *Applicant Contact:* Joe D. Davis, President, L.B. Industries, Inc., Member, Island Park Hydro L.L.C., P.O. Box 2797, Boise, ID 83701, (208) 345–7515.

i. *FERC Contact:* Mark Hooper, (202) 219–2680.

j. *Comment Date:* July 10, 1995.

k. *Description of Transfer:* Applicant wishes to transfer its license back to Fall River Rural Electric Cooperative, Inc.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

8 a. *Type of Application:* Approval to Reclassify 11.5 Acres Along Lake Marion.

b. *Project No.* 199–093.

c. *Date Filed:* April 20, 1995.

d. *Applicant:* South Carolina Public Service Authority.

e. *Name of Project:* Santee-Cooper Hydroelectric Project.

f. *Location:* Orangeburg, Berkeley, and Clarendon Counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. G. Denton Lindsay, Jr., Santee Cooper, One Riverwood Drive, P.O. Box 2946101, Moncks Corner, SC 29461–2901, (803) 761–4075.

i. *FERC Contact:* Jean Potvin, (202) 219–0022.

j. *Comment Date:* July 15, 1995.

k. *Description of Project:* Licensee proposes reclassifying 11.5 acres along Lake Marion in Orangeburg County in the vicinity of Rocks Landing and Rocks Pond Campground from Future Public Vacation Recreational to Residential Marginal.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 11532–000.

c. *Date filed:* May 1, 1995.

d. *Applicant:* Engineering Company, Inc.

e. *Name of Project:* L&D 25.

f. *Location:* On the Mississippi River in Calhoun County, Illinois near Winfield, Missouri.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Richard A. Volkin, 354 Turnpike Street, Canton, MA 02021, (617) 821–4338.

i. *FERC Contact:* Charles T. Raabe (202) 219–2811.

j. *Comment Date:* July 28, 1995.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Lock and Dam 25 and would consist of: (1) An inlet channel; (2) a powerhouse containing four generating units having a total installed capacity of 50,000-kW; (3) a tailrace channel; and (4) appurtenant facilities.

Applicant estimates that the cost of the studies under the terms of the permit would be $200,000 and that the average annual generation would be 246,000,000-kWh.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 11533–000.

c. *Date filed:* May 1, 1995.

d. *Applicant:* Engineering Company, Inc.

e. *Name of Project:* L&D 24.

f. *Location:* On the Mississippi River in Calhoun County, Illinois near Clarksville, Missouri.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Richard A. Volkin, 354 Turnpike Street, Canton, MA 02021, (617) 821–4338.

i. *FERC Contact:* Charles T. Raabe (202) 219–2811.

j. *Comment Date:* July 28, 1995.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Lock and Dam 24 and would consist of: (1) An inlet channel; (2) a powerhouse containing four generating units having a total installed capacity of 50,000-kW; and (3) appurtenant facilities.

Applicant estimates that the cost of the studies under the terms of the permit would be $250,000 and that the average annual generation would be 245,000,000-kWh.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11a. *Type of Application:* Surrender of License.

b. *Project No.* 4669–030.

c. *Date Filed:* May 19, 1995.

d. *Applicant:* Rancho Riata Hydro Partners, Inc.

e. *Name of Project:* Rancho Riata.

f. *Location:* On Bishop Creek, Inyo County, California, near Bishop.

g. *Filed Pursuant to:* Federal Power Act, §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Joseph M. Keating, Rancho Riata Hydro Partners, Inc., 847 Pacific Street, Placerville, CA 95667, (916) 622–9013.

i. *FERC Contact:* Mark Hooper, (202) 219–2680.

j. *Comment Date:* July 17, 1995.

k. *Description of Application:* Applicant wishes to surrender its license for economic reasons. No construction has occurred.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

12 a. *Type of Application:* Surrender of Exemption.

b. *Project No.* 6633–007.

c. *Date Filed:* May 18, 1995.

d. *Applicant:* Humboldt State University.

e. *Name of Project:* Davis Creek.

f. *Location:* On Davis Creek, Humboldt County, California, near Maple Creek.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)825(r).

h. *Applicant Contact:* Eileen A. Lorimer, Project Manager, EA Engineering, Science, and Technology, 3468 Mt. Diablo Boulevard, Suite B–100, Lafayette, CA 94549, (510) 283–7077.

i. *FERC Contact:* Mark Hooper, (202) 219–2680.

j. *Comment Date:* July 17, 1995.

k. *Description of Application:* The project consists of: (1) A 3-foot-high, 25-foot-long diversion structure; (2) a 10-inch-diameter, 3,700-foot-long conduit/penstock system; (3) a powerhouse with a 100 Kw generator, operating under a 520-foot head; (4) a 4,200-foot-long, 12 Kv transmission line; and (5) a tailrace to Davis Creek.

Applicant wishes to surrender the exemption for economic reasons.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

13 a. *Type of Application:* Major License.

b. *Project No.* 11175–002.

c. *Date filed:* January 3, 1995.

d. *Applicant:* Crown Hydro Company.

e. *Name of Project:* Crown Mill.

f. *Location:* On the Mississippi River, in the city of Minneapolis, Hennepin County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Greg Olsen Crown Hydro Company, 5416 Tenth Avenue South Minneapolis, MN 55417, (612) 822–2212.

i. *FERC Contact:* Charles T. Raabe (202) 219–2811.

j. *Deadline Date:* August 3, 1995.

k. *Status of Environmental Analysis:* The application is not ready for environmental analysis at this time—see attached paragraph D7.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Upper St. Anthony Falls dam and reservoir and would consist of: (1) A reconstructed upper canal and intake tunnel; (2) a proposed powerhouse room, to be constructed on the lower level of Crown Mill, containing two hydropower units with a total capacity of 3,400–kW; (3) an existing tailrace tunnel and a reconstructed tailrace canal; (4) a proposed underground transmission line; and (5) appurtenant facilities.

The estimated annual energy production would be 16,650 MWh. Project power would be sold to Northern States Power Company.

m. This notice also consists of the following standard paragraphs: A2, A9, B1, and D7.

n. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E. Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Crown Hydro Company, 5416 Tenth Avenue South, Minneapolis, MN 55417.

14 a. *Type of Application:* New Major License.

b. *Project No.* 1988–007.

c. *Date Filed:* March 5, 1985.

d. *Applicant:* Pacific Gas & Electric Company.

e. *Name of Project:* Haas-Kings River Project.

f. *Location:* On the North Fork of the Kings River and its tributaries, within the Sierra National Forest, in Fresno County, California.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Shan Bhattacharya, Manager, Hydro Generation, Pacific Gas & Electric Company, 201 Mission Street, Room 1012, P.O. Box 770000, P10A, San Francisco, CA 94177.

i. *FERC Contact:* Frankie Green (202) 501–7704.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of Project:* The existing Haas-Kings River Project consists of two developments on the North Fork of the Kings River near the towns of Centerville, Fresno, and Sanger: the Haas Development and the Kings River Development. Courtright Lake and Lake Wishon are reservoirs for the project, and the Helms Pumped Storage Project (FERC No. 2735) cycles water between them. Water from the Haas Development passes through the Balch project (FERC No. 175) before entering the Kings River Development.

Haas Development

The Haas Development consists of: (1) The Courtright Dam, a 315-foot-high, 862-foot-long rock-fill concrete-faced dam consisting of (a) a 4-foot-high reinforced concrete parapet wall, (b) ungated spillway 300-foot-wide and 8-foot-deep, (c) outlet works with a tunnel through the left abutment, a submerged intake tower and discharge controls, and (d) a right abutment with an intake-discharge structure and tunnel; (2) the Wishon Dam, a 260-foot-high, 3,330-foot-long dumped rock-fill concrete-faced dam consisting of (a) a 4-foot-high reinforced concrete parapet wall, (b) four small auxiliary concrete gravity dams with a total length of 238 feet and a maximum height of 24 feet, (c) a 285-foot-long, 15-foot-deep gated spillway, (d) six radial gates, each 40-foot-wide by 11.5-foot-high, (e) outlet works (Haas tunnel) with a bifurcation that discharges into the North Fork Kings River, and (f) an intake-discharge structure and tunnel; (3) an unlined 6.19-mile-long, 13-foot-high by 13-foot-wide Haas tunnel consisting of (a) a submerged tunnel intake tower 15-feet by 15-feet and (b) a differential type surge tank; (4) a welded steel 4,560-foot-long Haas penstock, varying in diameter from 96 inches to 77.5 inches and branching into two penstocks upstream of the powerhouse, which further taper from 52 inches to 42 inches; (5) Haas powerhouse, 500 feet underground and 56 feet by 173 feet in plan containing two generators with a total rating of 140,000 Kw; (6) a 1,936-foot-long by 17.5-foot-high by 15-foot-wide tailrace tunnel connecting Haas powerhouse with Balch diversion reservoir; (7) two impoundments with a gross storage capacity of 123,286 acre-feet (AF) and 128,606 AF for Courtright Dam and Wishon Dam, respectively; and (8) appurtenant facilities.

Kings River Development

The Kings River Development consists of: (1) A 14-foot-wide, 3.9-mile-long, horseshoe-shaped unlined tunnel connecting the Balch afterbay reservoir with the Kings River penstock and consisting of (a) two sections 1.7 and 1.8 miles long, (b) 0.4-mile long Dinkey Creek Siphon, 108 to 98 inch diameter steel pipe, and (c) a simple vertical surge tank; (2) a 108-inch to 90-inch diameter, 1,810-foot-long welded steel penstock; (3) a 102-foot by 55-foot powerhouse containing one generator with a total rating of 49,000 Kw; (4) a 510-foot-long, 20-foot-wide bottom, trapezoidal-shaped open channel tailrace with 1½ to 1 minimum side slopes and a minimum depth of 10 feet, connecting the Kings River powerhouse with the Pine Flat reservoir; and (5) appurtenant facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraph(s): A4 and D10.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Pacific Gas & Electric Company, 201 Mission Street, San Francisco, CA 94106, or by calling Tom Jereb at (415) 973–9320.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a

notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (August 4, 1995 for Project No. 1988–007). All reply comments must be filed with the Commission within 105 days from the date of this notice. (September 18, 1995 for Project No. 1988–007).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the

filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: June 7, 1995, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14313 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–536–000]

Columbia Gulf Transmission Co.; Notice of Application

June 6, 1995.

Take notice that on June 1, 1995, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP95–536–000 an application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Commission's Regulations thereunder for permission and approval to abandon natural gas transportation and exchange services for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia Gulf proposes to abandon the transportation and exchange services provided Natural by Columbia Gulf under Columbia Gulf's Rate Schedules X–81 and X–105. Columbia Gulf states that pursuant to Rate Schedule X–81, authorized in Docket No. CP81–185, Columbia Gulf and Natural exchanged up to 10,000 Mcf per day of natural gas attributable to Natural's South Marsh Island Block 265 volumes with volumes available to Columbia Gas Transmission Corporation (Columbia Gas) at the outlet of the Texaco, Inc. Henry Plant (Henry Plant), Vermilion Parish, Louisiana. Columbia Gulf explains that it transported Natural's gas from the point of receipt at Columbia Gulf's Pecan Island Plant, Vermilion Parish, Louisiana to the point of exchange at Columbia's Gulf's Rayne Compressor Station, Acadia Parish, Louisiana. Columbia Gulf relates that it redelivered thermally equivalent volumes of gas, less an adjustment for removal of liquefiable hydrocarbons, unaccounted-for gas and fuel, at the outlet of the Henry Plant.

Columbia Gulf further states that under Rate Schedule X–105, authorized in Docket No. CP84–132, Columbia Gulf, along with Tennessee Gas Pipeline Company (Tennessee), transported natural gas on a firm basis through the South Pass Project 77 offshore facilities of up to 64,000 Mcf per day (32,500 Mcf by Columbia Gulf) from receipt points at the interconnection of Columbia Gulf's and Tennessee's jointly owned South Pass Project 77 facilities and pipeline extending from the South Pass Block 78 and West Delta Block 109, offshore Louisiana, to the terminus of the South Pass Project 77 facilities in Plaquemines Parish, Louisiana.

Columbia Gulf asserts that as a result of Natural's restructuring of its services pursuant to Commission Order No. 636, Natural no longer has a need for the transportation and exchange services available under Rate Schedule X–81 and X–105. Columbia Gulf declares that as a consequence, Natural and Columbia have agreed to an exit fee as contemplated by Order No. 636, in which the parties, among other things, agreed to terminate Natural's contractual obligations under Rate Schedules X–81 and X–105 through the payment of the exit fee by Natural to Columbia Gulf in consideration for Columbia Gulf's early termination and abandonment of Rate Schedules X–81 and X–105.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 27, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation 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 application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the abandonment 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 Columbia Gulf to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14264 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–327–000]

K N Interstate Gas Transmission Co.; Notice of Account No. 858 Filing

June 6, 1995.

Take notice that on June 1, 1995, K N Interstate Gas Transmission Co. (KNI) made its annual Account No. 858 tracker filing in the above captioned docket.

KNI states that the filing revises KNI's Account No. 858 rate component and details, for the months July 1994 through March 1995, its actual Account No. 858 cost recovery and incurrence.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to be heard or to make any protest with reference to this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 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 June 13, 1995. 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. 95–14269 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–2–53–000]

K N Interstate Gas Transmission Co.; Notice of Fuel and Loss Filing

June 6, 1995.

Take notice that on June 1, 1995, K N Interstate Gas Transmission Co. (KNI) made its annual fuel and loss reimbursement filing in the above captioned docket.

KNI states that the filing revises KNI's fuel and loss reimbursement percentages and details, for the fifteen months October 1993 through December 1994, its actual fuel and loss and its fuel and loss reimbursement.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a 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, 385.214). All such motions or protests should be filed on or before June 13, 1995. 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. 95–14273 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–581–001]

National Fuel Gas Supply Corp.; Notice of Application

June 6, 1995.

Take notice that on June 1, 1995, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP94–581–001 an application pursuant to Section 7(b) of the Natural Gas Act to amend a Commission order issued September 13, 1994 in Docket No. CP94–581–001,[1] (September Order) for permission and approval to abandon an additional observation well within the Swede Hill Storage Field in McKean County, Pennsylvania, all as more fully set forth in the application on file with the Commission and open to public inspection.

The September Order granted National the authority to abandon Wells 412–P, 413–P and 415–P and Well Lines S–W413, S–W415, S–W416 and S–W418 at the Swede Hill Storage Field. National states that the authorized abandonments were performed during December 1994, January and February 1995 and that during that time it determined that Well 416–P, an observation well which is located at the end of Well Line S–W416, needed to be plugged and abandoned. National states that it completed the plugging work on February 23, 1995. In its application, National seeks to amend the abandonment authorization to include Well 416–P. National states that Well 416–P was not necessary for the continued operation of the Swede Hill Field and that its plugging will not reduce service form the field.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 27, 1995, 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 385.214 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.

Take further notice that, pursuant to the authority contained in and subject to the 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 application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 National to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14263 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[1] *See*, 68 FERC ¶ 62,242 (1994).

[Docket No. RP95–326–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

June 6, 1995.

Take notice that on June 1, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing proposed changes in its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective July 1, 1995.

Natural states that the purpose of this filing is to comply with Article VIII of Natural's Stipulation and Agreement at Docket No. RP93–36, which required Natural to file a general rate case to be effective no later than December 1, 1995. The filing reflects a 14.25% equity return allowance, increased depreciation rates for onshore transmission and storage facilities, and increased levels of operating costs when compared to the Docket No. RP93–36 settlement. In addition, Natural's filing reflects the implementation of a revised transportation zone boundary system consistent with its pending rate design settlement filed February 8, 1995, at Docket No. RP93–36.

Natural has also included in the filing a Pro Forma set of rates covering new and revised services on its system. The Pro Forma filing reflects the requested implementation of two new storage services under Rate Schedules DSS and NSS, as well as the addition of new service options under existing Rate Schedules FTS and FTS–G. Natural states that the new and revised services are intended to replace services currently provided under Rate Schedules S–1, LS–2, LS–3, FSS, S–2, S–2/G, FTS–E and FTS–E/G and bring Natural's services more in line with the demands of the marketplace. An

effective date of December 1, 1995 is requested for the new services.

Natural requests whatever waivers may be necessary to permit the tariff sheets as submitted herein to become effective as requested.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding 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. 95–14270 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. R95–330–000]

NorAm Gas Transmission Co.; Notice of Filing

June 6, 1995.

Take notice that on June 1, 1995, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet, to become effective July 1, 1995:

Third Revised Sheet No. 13

NGT states that these tariff sheets are filed in compliance with Section 5.7(c)(ii)(2)(B), Second Revised Sheet Nos. 214 and 215 of NGT's tariff.

Pursuant to said tariff provision, the proposed tariff sheets adjust NGT's cashout balancing revenue credit for the period January through March 1995.

Any person desiring to be heard or protest the said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 13, 1995. 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. 95–14265 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–331–000]

NorAm Gas Transmission Co.; Notice of Filing

June 6, 1995.

Take notice that on June 1, 1995, NorAm Gas Transmission Company (NGT) tendered for filing tariff sheets that reflect two new Forms of Service Agreement and modifications to the existing Form of Request for Service and Form of Service Agreement in its FERC Gas Tariff, Fourth Revised Volume No. 1, to become effective July 1, 1995.

NGT states that the tariff sheets include new Forms of Service Agreement for Rate Schedule FT and ITA which have been streamlined to result in one page, front and back, as opposed to the existing multi-page and multi-exhibit Form of Service Agreement. Additionally, NGT's current Form of Request for Service is being modified to constitute a list of items of information required for a request for service to allow a Shipper to provide the applicable information in any written form.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before June 13, 1995. 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. 95–14266 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–328–000]

Northern Natural Gas Co., Notice of Proposed Changes in FERC Gas Tariff

June 6, 1995.

Take notice that on June 1, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current GSR–RA surcharge which is designed to recover Northern's gas supply realignment costs. Therefore, Northern has filed 2nd Revised 17th Revised Sheet Nos. 50 and 51 to revise the GSR–RA surcharge, effective July 1, 1995.

Northern states that copies of this filing were served upon the Company's 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 Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 13, 1995. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14268 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–332–000]

Panhandle Eastern Pipe Line Co., Notice of Proposed Changes in FERC Gas Tariff

June 6, 1995.

Take notice that on June 1, 1995, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing. The

proposed effective date of the revised tariff sheets is July 1, 1995.

Panhandle states that this filing is in compliance with the Commission's February 15, 1995 order in the above proceeding which requires Panhandle to file annual updates to its Unrecovered PGA Costs Surcharges to reflect current transportation billing determinants. The July 1, 1995 effective date proposed herein is the beginning of the second annual period under Section 18.12 of the General Terms and Conditions of Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The firm determinants reflected represent those in effect on May 1, 1995, and the interruptible determinants are for the twelve months ended April 30, 1995. The Reservation Surcharge applicable to Rate Schedules FT and EFT decreases to $.07 from the currently effective $.09, the SCT Volumetric Surcharge decreases to 0.44¢ from the currently effective 0.56¢, and the Volumetric Surcharge applicable to Rate Schedules IT and EIT decreases to 0.18¢ from the currently effective 0.19¢.

Panhandle states that copies of its filing have been served on all affected customers, all parties to this proceeding and applicable state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 13, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the 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. 95–14267 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

S. D. Warren Co., Notice of Intent To File An Application for a New License

June 6, 1995.

Take notice that the S. D. Warren Company, the existing licensee for the Mallison Falls Power Station, Project No. 2932, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2932 was issued effective April 1, 1962, and expires May 31, 2000.

The project is located on the Presumpscot River in Cumberland County, Maine. The principal works of the Mallison Falls Project include a 288-foot-long, 14-foot-high dam with a reinforced concrete section and a cut granite section; a head gate structure with 5 headgates; a reservoir with negligible storage capacity; a 675-foot-long, 6-foot-deep intake canal cut into bedrock; a powerhouse containing two 400-kw generators; generator leads, step-up transformer; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 89 Cumberland Street, P.O. Box 5000, Westbrook, Maine 04098–1597.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14260 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2941 Maine]

S. D. Warren Co., Notice of Intent to File an Application for a New License

June 6, 1995.

Take notice that the S.D. Warren Company, the existing licensee for the Little Falls Power Station, Project No. 2941, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2941 was issued effective April 1, 1962, and expires May 31, 2000.

The project is located on the Presumpscot River in Cumberland County, Maine. The principal works of the Little Falls Project include a 200-foot-long, 14-foot-high reinforced concrete spillway dam and a 110-foot-long, 14-foot-high stone sluiceway dam, with 3 sluice gates, at a right angle to the spillway dam; a powerhouse at a right angle and adjacent to the spillway dam and containing four generators with a total rated capacity of 1000–kW; generator leads, step-up transformer, transmission line connections; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 89 Cumberland Street, P.O. Box 5000, Westbrook, Maine 04098–1597.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 1998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14261 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–314–000]

Tennessee Gas Pipeline Company; Notice of Take-or-Pay Report and Request for Waiver

June 6, 1995.

Take notice that on May 31, 1995 Tennessee Gas Pipeline Company (Tennessee) tendered for filing a Take-or-Pay Report and Request for Waiver.

Tennessee states that Article XXV of the General Terms and Conditions of its FERC Tariff, Fifth Revised Vol. No. 1, provides that Tennessee may file for the recovery of additional take-or-pay costs not included in previous filings. Tennessee further states that it has not incurred significant take-or-pay costs since its last filing in Docket No. RP94–261. Consequently, Tennessee requests a waiver of Section 2 of Article XXV to permit Tennessee to omit the filing of the revised tariff sheets scheduled to be filed on May 31, 1995.

Tennessee notes that the omission will not affect the accounting for these additional costs and carrying charges, in accord with Article XXV, Section 3.2, and the costs will be reflected in a future filing pursuant to Article XXV, Section 2.2.

Tennessee states that a copy of its filing was served on each of its customers and affected 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 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 13, 1995. 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 Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14271 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP92–137–038 and RP93–136–006]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

June 6, 1995.

Take notice that on June 1, 1995 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff Third Revised Volume No. 1 enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective July 1, 1995.

Transco states that the instant filing is a result of an October 20, 1994, Presiding Administrative Law Judge (ALJ) ''Initial Decision Granting Motion for Summary Disposition Concerning Merchant Allocation Question'' requiring Transco to remove from its gathering function $5,556,863 of labor-related A&G costs and $74,240 of general plant and related costs, and to reassign these costs to its merchant service. On February 28, 1995 the Commission affirmed the ALJ's decision, and on May 24, 1995 denied Transco's request for rehearing. Accordingly, Transco is submitting tariff sheets reflecting the decreased charges for the Tilden Processing Plant and all other gathering facilities, and the increased Non-Gas Demand Fee under its sales service Rate Schedules FS and OFS.

TGPL states that copies of the instant filing has been served to interested parties to Docket No. RP92–137.

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 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 13, 1995. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–14272 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–541–000]

Trunkline Gas Co.; Notice of Request Under Blanket Authorization

June 6, 1995.

Take notice that on June 2, 1995, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–541–000 a request pursuant to Sections 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.212) for authorization to construct and operate a fourth delivery meter at an existing delivery station for Peoples Gas, Light and Coke Company (Peoples Gas) located in Champaign County, Illinois under Trunkline's blanket certificate issued in Docket No. CP83–84–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set fourth in the request that is on file with the Commission and open to public inspection.

Trunkline proposes to install a fourth 12-inch meter run and appurtenant valves and piping on approximately 0.85 acres of property owned by Peoples Gas at the existing Peoples Gas Manlove Storage Field delivery station. The proposed facilities will be used to measure gas delivery of up to 143.5 Mcf per day to Peoples Gas through a gas treatment facility being constructed pursuant to Section 2.55(a) of the Commission's Regulations. Trunkline states that it will own, operate and maintain the proposed facilities. Trunkline estimate of the cost of the facilities to be constructed is $200,000.

Any person or the Commission's staff may, within 45 days after 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 Section 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 therefor, 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.

[FR Doc. 95–14262 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–329–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

June 6, 1995.

Take Notice that on June 1, 1995, Wyoming Interstate Company, Ltd. (WIC), tendered for filing the following revised tariff sheets to its FERC Gas Tariffs, First Revised Volume No. 1 and Second Revised Volume No. 2:

First Revised Volume No. 1
Second Revised Sheet No. 25
Third Revised Sheet No. 26
Second Revised Sheet No. 27
First Revised Sheet No. 29B
Second Revised Volume No. 2
Second Revised Sheet No. 54
Third Revised Sheet No. 55
Second Revised Sheet No. 56
First Revised Sheet No. 57C
First Revised Sheet No. 57D

In compliance with Order No. 577, WIC is proposing to revise the capacity release provisions in its tariff to state that:

1. A Releasing Shipper can release capacity to a Replacement Shipper in a pre-arranged release exempt from the posting and bid requirements for a period of one calendar month or less.
2. A Releasing Shipper that has made a pre-arranged release exempt from posting and bidding cannot re-release the same capacity to the same Replacement Shipper in a pre-arranged release exempt from posting and bidding at less than the maximum rate until 28 days after the first release has terminated.

WIC states its tariff already conforms to the clarification in Order No. 577 that a pre-arranged release at the maximum rate is exempt from bidding, regardless of the duration of the release.

WIC states that effective May 4, 1995, WIC waived its tariff provisions to conform with Order No. 577 and it will continue such waiver until the revised tariff sheets, filed to comply with Order No. 577, are accepted. WIC has requested a July 1, 1995, effective date.

WIC states that copies of this filing were served upon all WIC transportation customers and State Commissions where WIC provides transportation service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 385.214 or 385.211). All such petitions or protests should be filed on or before June 13, 1995. 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. 95–14274 Filed 6–9–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board; Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770), notice is hereby given of the following meeting:

Name: State Energy Advisory Board.

Date and Time: July 20–21, 1995 from 9:00 am to 5:00 pm.

Place: The San Francisco Hilton and Towers, 333 O'Farrell Street, San Francisco, California 94102. (415) 771–1400.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Technical and Financial Assistance (EE–50), Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- The current disposition of realignment efforts underway at the U.S. Department of Energy.
- The FY 1996 Federal budget request for Energy Efficiency and Renewable Energy programs.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 6, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–14348 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 95–35–NG]

DeKalb Energy Company; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting DEKALB Energy Company blanket authorization to import up to 73 Bcf of natural gas from Canada over a period of two years beginning on the date of first delivery after October 31, 1995. This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on May 30, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–14237 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–36–NG]

Pennunion Energy Services, L.L.C.; Order Granting Blanket Authorization To Import Natural Gas From Canada and Mexico and To Export Natural Gas to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting PennUnion Energy Services, L.L.C. authorization to import up to 40 Bcf of natural gas from Canada and to export up to 40 Bcf of natural gas to Canada. PennUnion also received authorization to import up to 40 Bcf of natural gas from Mexico and to export up to 40 Bcf of natural gas to Mexico. The term of this authorization is for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., May 30, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–14238 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed During the Week of April 24 Through April 28, 1995

During the Week of April 24 through April 28, 1995, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 C.F.R. part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of

the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: June 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 24 to April 28, 1995]

Date	Name and Location of Applicant	Case No.	Type of Submission
4/24/95	A. Victorian, Nottingham, England.	VFA–0036	Appeal of an Information Request Denial. If Granted: The March 23, 1995 Freedom of Information Request Denial issued by DOE Albuquerque Operations Office would be rescinded, and A. Victorian would receive access to copies of documents, findings and reports regarding the study of Karen Silkwood's bones, in the possession of the Los Alamos National Laboratory.
4/25/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSA–0011	Request for Review of Opinion under 10 C.F.R. Part 710. If Granted: The March 23, 1995 Opinion of the Office of Hearings and Appeals (Case No. VSO–0011) would be reviewed at the request of the Office of Safeguards and Security.
4/25/95	Gallen Seven-Up Bottling Co., Hackensack, New Jersey.	RK272–34	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If Granted: Gallen Seven-Up Bottling would receive a modification of their crude oil refund application granted in Case No. RF272–220.
4/25/95	Rocky Flats Field Office, Golden, Colorado.	VSA–0008	Request for Review of Opinion under 10 C.F.R. Part 710. If Granted: The March 27, 1995 Opinion of the Office of Hearings and Appeals (Case No. VSO–0008) would be reviewed at the request of the Office of Safeguards and Security.

REFUND APPLICATIONS RECEIVED

[Week of April 24 Through April 28, 1995]

Date received	Name of refund proceeding/name of refund application	Case No.
4/24/95	Richard Vardeman, Inc.	RC272–287
4/24/95	Cosey Brothers, Inc.	RC272–288
4/24/95	Morning Treat Caffe Co.	RC272–289

[FR Doc. 95–14241 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed During the Week of April 3, 1995 Through April 7, 1995

During the Week of April 3 through April 7, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 C.F.R. part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: June 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 3 Through April 7, 1995]

Date	Name and Location of Applicant	Case No.	Type of Submission
4/3/95	County of Los Alamos, Los Alamos, New Mexico.	VWA–0002	Request for Hearing Under DOE Contractor Employee Protection Program. If Granted: At the request of County of Los Alamos, a hearing under 10 C.F.R. Part 708 would be held on the complaint of Peter I. Duran that reprisals were taken against him by the County of Los Alamos as a consequence of his having disclosed safety and health concerns.
4/3/95	Peter I. Duran, Santa Fe, New Mexico	VWA–0003	Request for Hearing under DOE Contractor Employee Protection Program. If Granted: A hearing under 10 C.F.R. Part 708 would be held on the complaint of Peter I. Duran that reprisals were taken against him by management officials of County of Los Alamos as a consequence of his having disclosed safety and health concerns.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of April 3 Through April 7, 1995]

Date	Name and Location of Applicant	Case No.	Type of Submission
4/6/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO–0028	Request for Hearing under 10 C.F.R. Part 710. If Granted: An individual employed at the DOE's Albuquerque Operations Office would receive a hearing under 10 C.F.R. Part 710.
4/7/95	Oak Ridge Operations Office, Oak Ridge, Tennessee.	VSO–0029	Request for Hearing under 10 C.F.R. Part 710. If Granted: An individual employed at the DOE Oak Ridge Operations Office would receive a hearing under 10 C.F.R. Part 710.
4/7/95	Oak Ridge Operations Office, Oak Ridge, Tennessee.	VSO–0030	Request for Hearing under 10 C.F.R. Part 710 Refund Proceeding. If Granted: An individual employed at the DOE's Oak Ridge Operations Office would receive a hearing under 10 C.F.R. Part 710.
4/7/95	Simmons Pole Piling, Orange Beach, Alabama.	RR300–262	Request for Modification/Rescission in the Gulf Oil Refund Proceeding. If Granted: The January 30, 1995 Dismissal, Case No. RF300–18835, issued to Simmons Pole Piling would be modified regarding the firm's application for refund submitted in the Gulf Oil Refund proceeding.

WEEK OF AUGUST 19 THROUGH AUGUST 26, 1994

Date received	Name of refund proceeding/name of refund application	Case No.
	Crude Oil Refund Applications	RG272–74 through RG272–77

[FR Doc. 95–14243 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed During the Week of April 10 Through April 14 1995

During the Week of April 10 through April 14, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 C.F.R. Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 10 through April 14, 1995]

Date	Name and Location of Applicant	Case No.	Type of Submission
4/10/95	Granite Petroleum Corporation, Washington, D.C.	VEF–0015	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the September 1983 Remedial Order issued to Granite Petroleum Corporation.
4/10/95	Malcolm M. Turner, Washington, D.C.	VEF–0013	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the February 16, 1989 Remedial Order issued to Malcolm M. Turner.
4/10/95	Revere Petroleum Corporation *et al.*, Washington, D.C.	VEF–0014	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the May 29, 1992 Remedial Order issued to Revere Petroleum Corporation *et al.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of April 10 through April 14, 1995]

Date	Name and Location of Applicant	Case No.	Type of Submission
4/10/95	27 W. Landis Texaco/Langhorne, Texaco Service Station, Bethesda, Maryland.	RR321–177 RR321–178	Request for modification/rescission in the Texaco refund proceeding. If Granted: The February 23, 1995 Decision and Order, Case Nos. RF321–16943 and RF321–16944, issued to 27 W. Landis Texaco and Langhorne Texaco Service Station would be modified regarding the firm's applications for refund submitted in the Texaco Refund proceeding.
4/11/95	Rocket Oil Company, Madisonville, Kentucky.	VEE–0007	Exception to the Reporting Requirement. If Granted: Rocket Oil Company would not be required to file Form EIA–782B the Reseller's/Retailer's Monthly Petroleum Products Sales Report.

REFUND APPLICATIONS RECEIVED

[Week of April 10 Through April 14, 1995]

Date received	Name of refund proceeding/name of refund application	Case No.
9/26/94	Agway Petroleum Corp.	RF344–24
4/17/95	Livingston Gulf	RF300–21826

[FR Doc. 95–14244 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed During the Week of April 17 Through April 21, 1995

During the Week of April 17 through April 21, 1995, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

June 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 17 Through April 21, 1995]

Date	Name and location of applicant	Case No.	Type of submission
4/18/95	International Federation of Professional and Technical Engineers, Idaho Falls, Idaho.	VFA–0034	Appeal of an information request denial. If Granted: The March 20, 1995 Freedom of Information Request Denial issued by the DOE Idaho Operations Office would be rescinded, and the International Federation of Professional and Technical Engineers would receive access to a copy of the DOE/Augustine Pitrolo Consulting Support contract and the Short List of SES Candidates for Deputy of the Office of Program Execution.
4/19/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSA–0031	Request for hearing under 10 CFR Part 710. If Granted: An individual employed at Albuquerque Operations Office would receive a hearing under 10 CFR Part 710.
4/21/95	U.A. Plumbers and Pipefitters, Local No. 36, Washington, DC.	VFA–0035	Appeal of an information request denial. If Granted: The March 20, 1995 Freedom of Information Request Denial issued by the Idaho Operations Office would be rescinded, and U.A. Plumbers and Pipefitters, Local Number 36, would receive access to certain Department of Energy documents relating to the West Valley Demonstration Project.

REFUND APPLICATIONS RECEIVED

[Week of April 17 to April 21, 1995]

Date received	Name of refund proceeding/name of refund application	Case No.
4/21/95	Zinn Companies, Inc	RF349–21
4/17/95 thru 4/21/95	Crude Oil Refund Applications	RG272–145 thru RG272–155

[FR Doc. 95–14245 Filed 6–9–95; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of April 24 Through April 28, 1995

During the week of April 24 through April 28, 1995, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request for Exception

Lane's Service, Inc., 4/27/95, LEE–0158

Lane's Service, Inc. (Lane), filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' The DOE determined that Lane did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the reporting requirements. Accordingly, exception relief was denied.

Refund Applications

Gulf Oil Corporation/Marine Fueling, Inc., 4/27/95, RF300–17154

Marine Fueling, Inc. (Marine) filed an Application for Refund in the Gulf Oil Corporation (Gulf) special refund proceeding. In considering the application, the DOE noted that it had already held, in connection with another refund application filed by Marine, that the sales agreement pursuant to which Marine sold its business in 1975 transferred to the buyer the right to any future refunds. *See Murphy Oil Corp./Marine Fueling Division*, 21 DOE ¶ 85,329 (1991). Based on that holding, the Application was denied.

Texaco Inc./27 W. Landis Texaco, Langhorne Texaco Service Station, 4/27/95, RR321–177, RR321–178

The DOE issued a Decision and Order concerning two Motions for Reconsideration submitted by indirect purchasers of Texaco products. The DOE determined that the movants were eligible to receive refunds as determined in a prior Decision and Order of the DOE, *Texaco Inc./27 W. Landis Texaco*, 24 DOE ¶ 85,137 (1995). The total of the refunds disbursed to the movants was $15,066 ($10,302 principal and $4,764 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Glock Bros. Et al	RF304–12055	04/27/95
Gulf Oil Corporation/Airport Gulf	RF300–20608	04/27/95
Texaco Inc./Bill's Texaco Et al	RF321–16783	04/27/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Brown-Graves Lumber	RF272–97305
Buffalo Aeronautical	RF272–98317
Central Vermont Medical Center, Inc	RF272–97387
City of Salem	RF272–85618
City of Williamsburg	RF272–85723
Columbia County	RF272–85676
Convenience Corner	RF321–14157
County of Oswego Highway Dept	RF272–96528
Dayton Vacuum Truck Service	RF321–6570
Fields Texaco	RF321–13437
James Bennett Grocery	RF321–18966
John R. & Seven Mile Texaco	RF321–18051
Kaloust Texaco	RF321–20907
Kaloust Texaco	RF321–20908
Lebanon County	RF272–85550
Lee County	RF272–85772
Lyndhurst, NJ	RF272–85398
Normandy Texaco	RF321–18008
Otter Tail County	RF272–88973
Parkway Texaco	RF321–18001
Roxbury Texaco	RF321–19415
Southwestern Vermont Medical Center	RF272–97392
Tippah County	RF272–85633
Town of Sandwich	RF272–85564
Town of Swampscott	RF272–88967
Town of Upton	RF272–85299
Town of Wayland	RF272–88027
Wright's Service Station	RF321–18648

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: June 1, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–14242 Filed 6–9–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 5220–1]

Border Environment Cooperation Commission (BECC) Draft Guidelines for Project Submission and Criteria for Project Certification

AGENCY: Border Environment Cooperation Commission (BECC).

ACTION: Request for Public Comment on the BECC Draft Guidelines for Project Submission and Criteria for Project Certification.

SUMMARY: This notice announces the availability of the BECC Draft Guidelines for Project Submission and Criteria for Project Certification for public review and comment.

DATES: Written comments must be submitted to the BECC on or before July 14, 1995. Oral comments may be received on July 28, 1995 at the BECC Board of Directors Public Meeting in Tijuana, Baja California.To mail comments or for further information contact:

April Lander, Environmental Program Manager, Border Environment Cooperation Commission, PO Box 221648, El Paso, TX 79913, Phone (011–52–16) 29–23–95 in Juarez, Mexico. Fax (011–52–16) 29–23–97

H. Roger Frauenfelder, General Manager, Border Environment Cooperation Commission, PO Box 221648, El Paso, TX 79913

Dated: June 2, 1995.

April Lander,

Acting General Manager.

Draft—Border Environment Cooperation Commission Guidelines for Project Submission and Criteria for Project Certification

I. Authority

These guidelines and criteria are adopted under the authority of the November 1993 Agreement Between the Government of the United States of America (U.S.) and the Government of the United Mexican States (Mexico) Concerning the Establishment of a Border Environment Cooperation Commission (BECC) and a North American Development Bank (NADBank) which authorizes the BECC Board of Directors (Board) to adopt rules, guidelines, and criteria as may be necessary or appropriate to conduct BECC business.

II. Program Purpose

The BECC was created in parallel with the North American Free Trade Agreement (NAFTA) as a binational institution to promote cooperation in achieving sustainable development for the well-being of present and future generations through the preservation, protection, and enhancement of the environment along the United States and Mexican border.

III. Program Scope

The BECC will work with states and localities, other public entities, and private investors, to develop effective solutions to environmental problems in the border region. The BECC may (1) assist with the planning, design, construction management, operations and maintenance phases of environmental infrastructure projects; (2) assess the technical and financial feasibility of projects, (3) evaluate social, environmental, and economic impacts of projects; (4) assist with public and private financing for projects; (5) provide technical assistance to applicants in development of proposals, project feasibility planning, engineering design, and environmental assessments; (6) assist with the development of a comprehensive public outreach and participation plan, and (7) certify projects for financing by the NADBank or other sources.

Projects located within 100 km (62 miles) on either side of the U.S./Mexico border may be considered for certification. Projects outside this region may be considered for certification if the BECC, with concurrence of the U.S. Environmental Protection Agency and the Mexican Secretaria de Desarrollo Social, find the project would remedy an environmental or health problem within the 100 km (62 mile) area.

Priority projects will be in the areas of water pollution, wastewater treatment, municipal solid waste, and related matters as defined by the November 1993 Agreement. Potential water pollution projects could include potable water treatment and/or water supply systems, water pollution prevention, or projects to improve or restore the quality of water resources. Potential wastewater treatment projects could include wastewater collection systems, wastewater treatment plants, water reuse systems, or systems providing for the beneficial use of sludge. Potential municipal solid waste projects could include landfills, solid waste collection and disposal, reuse, recycling, or waste to energy projects. Related projects include projects corresponding to the three priority areas described above.

The BECC acknowledges the importance of the environmental goals and objectives embodied in the following international agreements: Agreement on Cooperation for the Protection and Improvement of the Environment in the Boarder Area (La Paz Agreements), the North American Free Trade Agreement (NAFTA), and the North American Agreement on Environmental Cooperation as well as other treaties undertaken by the United States or Mexico.

IV Definition of Terms

Advisory Council. Advisory Council of the BECC. The Council has 18 members, 9 from the United States and 9 from Mexico. The Council may provide advice to the Board of Directors or the General Manager on certification of projects.

Applicant. States and localities, other public entities, and private investors.

BENEFIT-COST RATIO. The ration of total project economic benefits to total project costs discounted at a predetermined annual rate, once the benefits and costs have been corrected from market distortions.

Board of Directors. Board of Directors of the BECC. The Board has 10 directors, 5 from the United States and 5 from Mexico. The Board determines general operational and structural policies for the BECC, evaluates projects, and certifies qualified projects.

Cultural Resources. Historical, archeological, and ethnic resources.

DISCOUNT RATE. The rate of discount measures how much less a sum of money is worth by each year that passes.

Environmental Infrastructure Project. A project that will prevent, control, or reduce environmental pollutants or contaminants, improve the drinking water supply, or protect flora and fauna so as to improve human health, promote sustainable development, or contribute to a higher quality of life.

General Manager. General Manager of the BECC.

INTERNAL RATE OF RETURN. Discount rate that makes the present value of a stream of benefits equal to the present value of a stream of costs.

Life Cycle Cost. Cost of the entire project including planning, construction, operations and maintenance phases.

Municipal Solid Waste. Domestic and commercial waste accumulated by a community.

Natural Resources. Flora, fauna, geology, soil, surface water, groundwater, wetlands, and air.

Related Matters. Other environmental issues related to the priority areas listed.

Transfer of Technology. Process in which newer technology developed in one location is acquired by another.

User Fee. Fee paid by each member of the community to finance a new facility or public service.

Wastewater Treatment. Primary, secondary, or tertiary treatment of a polluted liquid of diverse composition coming from domestic, industrial, commercial, agricultural, livestock waste, or other sources.

Water Pollution. Presence of one or more contaminants in the environment which damage or degrade the quality of water resources and methods to prevent, reduce, or mitigate such contamination.

V. Technical Assistance Proposal Submission Procedures

Requests for technical assistance for development of proposals, project feasibility planning, and engineering design studies, and environmental assessments may be submitted at any time to the General Manager with the Step I Project Pre-Proposal Submission Form. Funds for technical assistance are limited but staff is available to assist with general proposal guidance. The General Manager will give priority to communities which have the least available resources for project development.

VI. Project Proposal Submission Procedures

A. Preapplication Communication

Prior to project submission, project originators are highly encouraged to meet or communicate with appropriate BECC staff to establish fundamental eligibility of the proposed project and to be briefed on the two step BECC project submission process and the BECC technical assistance program.

B. Step I: Project Pre-Proposal Submission Process

Step I is a preliminary stage in the project proposal submission process to be completed prior to, or in conjunction with, the comprehensive project proposal as described in Step II: Project Proposal Submission Process. Step I involves completion of a relatively simple, straightforward form describing the project's basic parameters. These parameters will provide basic administrative information, will be used to establish initial project conformance with BECC objectives, and may indicate the applicant's need for technical assistance. The Step I: Project Pre-Proposal Form may be submitted at any time to the General Manager of the BECC.

The project information requested on Step 1 Form includes the project title, project sponsor information, project description, project type and location, expected benefits to human health and the environment, previous environmental and technical studies, engineering technical design, description of environmental assessment, community participation and support, estimated project capital costs, estimated annual costs, time schedule for each project phase, proposed method and sources of project financing, proposed sources of revenue for bank loan repayment, and additional information considered pertinent by the applicant. The Step I Form is provided in this document.

Border Environment Cooperation Commission Project Pre-Proposal Submission Form

(STEP 1)

1. Title of proposed project
2. Project sponsor/s
   Name:
   Address:
   Phone:
   Fax:
   Email:
3. Type of project:
   Wastewater treatment ____ Water pollution/supply ____
   Solid waste management ____ Other related project ____
4. General information
   Impact of the project. Binational ____ National ____
   Number of people directly affected
   Is the project located within 100 km (62 miles) of the United States/Mexican border? Yes ____ No ____
   If the project is outside that region, does the project significantly impact the border? Yes ____ No ____
   Will the project have a positive environmental benefit to the community? Yes ____ No ____
   Does the project comply with local, regional, state, and federal laws and regulations? Yes ____ No ____
   Is there a source of revenue to repay loans? Yes ____ No ____
   Is the project widely supported by the community? Yes ____ No ____
   Is technical assistance needed to complete the application process? Yes ____ No ____
5. General description of project
6. Geographic location
7. Expected benefits to human health and the environment
8. Previous environmental assessments and technical feasibility studies regarding project development
9. Description of engineering technical design
10. Environmental assessment
    If the project is already in compliance with local, regional, state and federal environmental laws and regulations provide a list of permits authorized, documents approved, and authorizing agencies.
    Otherwise, describe how the project will comply with appropriate regulatory agencies.
    Describe negative short and long-term environmental impacts of project
    Describe implication of the no project alternative
    Describe mechanisms to preserve, protect, and enhance environmental quality on a sustainable basis
11. Describe community participation and support in project planning
12. Estimated project capital costs (dollars)
    Planning
    Design
    Construction
    Equipment
    Education & training programs
    Public outreach program
    Other
    Total
13. Estimated annual costs (dollars)
    Operation and maintenance
    Equipment replacement
    Other

14. Time schedule	Number of months	Estimated completion date
Planning		
Environmental assessment		
Site preparation		

14. Time schedule	Number of months	Estimated completion date
Construction		
Start up operations		

15. Proposed method of project financing. Indicate actual and potential sources
16. Proposed sources of revenue for bank loan repayment. Indicate user fee system to be used, if any
17. Additional information

C. Step II: Project Proposal Submission Process

Step II of the project submission process may be completed in conjunction with, or subsequent to, completion of the Step I form. Step II involves provision of detailed project proposal information to the BECC in the following areas (1) general project description, (2) environmental assessment, (3) technical feasibility, (4) economic and financial feasibility, (5) social aspects, (6) community participation, and (7) operation and maintenance. The BECC requests that project information be submitted in the same order and using the same alphanumeric system as in this document.

The proposed project must meet fundamental BECC criteria for project certification. Beyond the ability of a project to meet fundamental BECC criteria, projects will be given additional priority ratings using sustainable development evaluation criteria which will prioritize projects that meet standards above and beyond fundamental criteria. The fundamental and sustainable development criteria are indicated for each of the seven sections described above. The process is designed to prioritize projects which achieve the BECC objectives to promote binational cooperation and to help preserve, protect, and enhance the environment.

1. General Description of the Project

Information Requested

a. Project Originator/s. Provide information for each project originator including, lead project manager, main contact for each project originator (if applicable), addresses, phone numbers, fax numbers, and Email addresses.

b. Project Location. Describe the geographical location of the project and provide a map.

c. Environmental Issue. Describe the environmental issue to be addressed by the project.

d. Project Alternatives. Describe alternative methods considered to solve the environmental issue including the consequences of a no project alternative.

e. Project Justification. Justify the project including aspects which make project execution necessary.

f. Project Strengths and Weaknesses. Discuss project strengths and weaknesses and available resources to overcome the weaknesses.

g. Binational Aspects. Discuss difficulties created by the binational scope of the project and how these difficulties might be resolved.

Fundamental BECC Criteria

a. The project must be within 100 km (62 miles) of the U.S./Mexican border or has been found by the BECC, in concurrence with the U.S. Environmental Protection Agency and the Mexican Secretario de Desarrollo Social, to remedy a transboundary environmental or health issue within the 100 km (62 mile) zone.

Sustainable Development Criteria

a. National or Binational Project. A binational project will receive a higher priority for this criterion than a project which affects only one country.

b. Extent of Local or Regional Environmental Benefit. A project which has a higher positive environmental impact at the local and/or regional level will be given a higher priority.

c. Scope of Project Impact. A project which addresses a cross-border, regional environmental priority will receive a higher priority than a project which addresses a regional priority within only one country. A project which addresses a local priority in only one country will receive a lower priority.

2. Environment

The goal of BECC is to help preserve, protect, and enhance the environment in a sustainable manner in order to improve the quality of life in the U.S./Mexico border region. The applicant should ensure that all negative environmental impacts of the project have been identified and considered in the project evaluation process, that appropriate safeguards have been included in the project for unforeseen impacts which could cause damage to natural resources, and that projects are in compliance with appropriate local, regional, state, and federal environmental regulations.

Information Requested

a. Documentation of Environmental Regulatory Compliance. Project originators must coordinate with appropriate local, regional, state, and federal agencies to identify all environmental impacts to natural and cultural resources as early in the project planning process as possible. Documentation of project approval by appropriate regulatory organizations must be provided to BECC prior to certification. There must be a credible schedule to obtain permits prior to start of construction.

i. Provide a list of all environmental issues affected by project development.

ii. Describe environmental action required, including no action, regulatory organization requiring the action, proof of action completed or proof of approval for method to complete the action in the future, and contact person.

iii. List required permits, regulatory organization providing permit, date permit approved, proof of approval, and contact person.

iv. Provide copies of all documents submitted to regulatory agencies to BECC.

b. Conformance with Local and Regional Conservation and Development Plans. Projects submitted to the BECC must conform with local and regional plans.

i. List applicable local and regional plans, agency with authority, and contact person.

ii. Describe how the project complies with the plans.

c. Environmental Assessment. Discuss short, medium, and long-term impacts on biological diversity, sensitive environmental habitats, and human health. Include an analysis of environmental risks, negative and positive impacts, mitigation of negative impacts, environmental standards and objectives of the affected area, and project alternatives including implications of not implementing the project, and appropriate additional information which has not already been described in documents provided to the BECC.

Fundamental BECC Criteria

a. Compliance with Applicable Environmental Regulations. All projects certified by the BECC must comply with all appropriate environmental regulations. Projects which do not comply with appropriate environmental regulations cannot be certified.

b. Conformance with Applicable Local and Regional Plans. All projects

must conform with applicable local and regional plans. Projects which do not conform with local and regional plans will not be certified.

c. Conformance with Applicable International Treaties. Projects must comply with applicable international treaties.

d. Environmental Mitigation. Projects with a major direct negative impact with no reasonable actions to mitigate the impact will not be certified.

Sustainable Development Criteria

a. Holistic Approach to Natural Resource Management. Projects which adopt a holistic approach to natural resource management and environmental protection by watershed, groundwater basin, airshed, land use planning, or similar method will receive higher priority. Projects addressing a single media within a small area will receive lower priority.

b. Natural Resource Sustainability. Projects which promote natural resource sustainability, such as a project which reduces waste at the source, uses fewer natural resources, reuses or recycles will receive higher priority.

c. Energy Sources. Projects which use only renewable energy sources will receive higher priority. A project which uses a combination of renewable energy resources and fossil fuel resources will receive medium priority and projects utilizing only fossil fuel resources will receive lower priority.

d. Energy Efficiency. Projects which have stronger energy efficiency/conservation measures will receive high priority. Projects which do not have efficiency/conservation measures will receive lower priority.

e. Negative Direct Environmental Impact at Project Site. Projects which do not create a direct negative impact on natural resources will receive higher priority. Projects which have a direct negative impact that will be mitigated will receive medium priority and projects which have a direct negative impact that will not be mitigated will receive lower priority.

f. Voluntary Environmental Mitigation Enhancement Measures. Projects which provide mitigation measures for restoration of degraded habitat, biodiversity enhancement, ecosystem preservation, or other measures which improve the quality of life for local residents or enhance the quality of the local environment such as parks will receive higher priority. Projects which provide marginal mitigation measures will receive medium priority. Projects which do not offer mitigation measures will receive lower priority.

g. Contamination Reduction. Projects which comprehensively address a contamination will receive medium priority, and projects which do not reduce contamination will receive lower priority.

h. Prevention of Contamination at Project Site. A project which has a highly effective pollution prevention of reduction program that prevents contamination at the project site during construction and operation of the project will receive high priority, an acceptable pollution prevention or reduction program will receive medium priority, and a less effective pollution prevention or reduction program will receive lower priority.

i. Monitoring and Enforcement. Projects with a highly effective environmental monitoring and enforcement program will receive higher priority. Projects with an acceptable program will receive medium priority and a less effective program will receive lower priority.

j. Human Health Issues. Projects which address critical human health needs will receive high priority. Projects which address some health needs will receive medium priority and projects which do not address health needs will receive lower priority.

3. Technical Feasibility

BECC will certify projects which use appropriate technology and are designed, and will be operated, and maintained in a manner which will achieve the project's purpose.

Information Requested

a. Project Specification. Include technical aspects which justify the project, providing the sensitivity analysis and justification of the following factors, dependent upon the type of project.

- Water Pollution: Growth analysis, both mid and long range for the proposed planning time frame; average daily consumption rate; characteristics of the production source, water quality analysis, pollution prevention program, transportation, and distribution infrastructure; type and capacity of treatment and its efficiencies, estimates of design and construction costs, estimated annual operation, and maintenance costs; and any other information that will ensure a better understanding of the project.
- Wastewater Treatment: Quantity and quality of wastewater to be treated; projection of the wastewater volume for the proposed life of the project; design of collection system including pumping; design of treated wastewater discharge or wastewater reuse systems; analysis of treated wastewater quality; sludge treatment analysis and system for final disposal of sludge; and any other information that will ensure a better understanding of the project.
- Municipal Solid Waste: Projection of amounts of solid waste generated by the population for the proposed life of the project; areas of collection; description of operation efficiency; type and capability of proposed equipment; plan for disposal of household hazardous waste; recycling proposals; plan for the expansion, upgrade, or closure of landfills; incineration capabilities; composting capabilities; energy production capabilities; and any other information that will ensure a better understanding of the project.

b. Technical Process. Use of proven or known effective technologies is encouraged. Criteria for selection and justification of the chosen technology should be included with emphasis on efficiency of operation. Projects that involve the transfer of technology should describe the process and projected performance data.

c. Quality Control Program. Submit the quality control plan for all aspects of the project. It should include contractor and equipment quality control, personnel training, as well as other quality control issues.

d. Investment Timetable. Submit the project financing plan and the required sequence to be followed in order to implement different stages of the project. Provide project development with a detailed description of stages, and activities necessary to reach the objectives in a timely and cost effective manner. Include a bar diagram showing the actions to be carried out, an investment schedule, stages of progress, cost and source of funds.

Fundamental BECC Criteria

None.

Sustainable Development Criteria

a. Transfer of Technology. Projects which transfer technology will receive a higher priority.

b. Level and Type of Technology to be Utilized. Projects which utilize proven technology will receive higher priority. Also, a closer match between the level of technology used and the ability of the local user to operate and maintain the system will result in a higher project priority.

c. Project Life Cycle Cost. Projects which have a lower life cycle cost will receive higher priority. Energy intensive systems, systems which incorporate high cost technical equipment, systems which require frequent maintenance and equipment replacement and that

require labor intensive operation all tend to be high life cycle cost projects.

d. Ease of Expanding Facilities to Meet Future Services Demands. Projects which can be expanded easily to meet future services demands will receive higher priority, projects which have restrictions in meeting future services demands will receive lower priority.

e. New Facility, Expansion of Existing Facility, or Rehabilitation of Existing Facility. Projects involving construction of new facilities will receive higher priority, assuming no facility is currently operating to deal with the environmental issue being addressed. Projects which expand the capacity of an existing facility or require addition of new facilities to existing facilities will receive medium priority and projects which rehabilitate existing facilities will receive lower priority.

4. Economic and Financial Feasibility

Economic and financial information will be used to verify the viability of proposed projects and assess the economic sustainability of the projects.

Information Requested

Applicants are requested to submit an analysis that shows a reasonable internal rate of return and payment capability and the basis for the assumptions. Furthermore, the applicant is requested to provide the following information:

a. Analysis of the cash flow, balance sheet, income statement, and sources of financing.

b. Plan to recover the investment and operational and maintenance costs. This plan should include an analysis of interest rate and anticipated income sources. If a user fee will be used discuss how the system will be set up and what assurances there are that users will pay.

c. Sensitivity analysis which compares the result of economic factors differing from those assumed in project planning (e.g. different interest rates, population growth rates, economic growth rates).

d. Financial statements for a 15 year horizon.

Fundamental BECC Criteria

a. Benefit/Cost (B/C) Ratio. This ratio is the main indicator of the economic feasibility of a project. It measures the proportion of benefits to costs. Projects must have a ratio greater than 1 in order to be considered for certification.

Sustainable Development Criteria

a. Relationship Between User Fees and Operating Costs (debt coverage). Projects which have a higher projected debt coverage (under payments as a percentage of required debt payment) will receive a higher priority.

b. Internal Rate of Return (IRR). The IRR indicates the economic feasibility of a project according to its expenditures and recoveries program. Projects having a greater IRR will receive higher priority than projects with a smaller IRR.

c. Community Economic Development. Projects which have a highly effective plan to promote local economic development such as procurement preference for local businesses and products and development of local employment and other community economic opportunities will receive higher priority. Projects with a plan which adequately promotes local economic development will receive medium priority and projects with less effective local economic development plans will receive lower priority.

d. Economic Sustainability. Projects should be both environmentally and economically sustainable. Projects which are economically sustainable over the long-term (e.g. projects which are sustainable with locally generated revenue) will receive higher priority. Projects which are only economically sustainable on a short-term basis (e.g. projects dependent on sources of revenue not reasonably assured for the life of the project) will receive lower priority.

5. Social Aspects

The BECC recognizes the need to assess social aspects which may affect the success of a project.

Information Requested

a. Project Impacts on Local Populations. Provide information on the number of people who will directly benefit if the project is implemented and the number of people who would be affected directly and indirectly if the project is not implemented. Discuss impacts on local employment, local economic development, and other local issues.

b. Project Impacts on Cultural Resources. Provide information on the cultural resources impacted by the project, if any.

c. Characterization of Local Economic Situation. Provide the most current information available on the local unemployment rate, the average per capital income, and current availability of environmental services.

Fundamental BECC Criteria

a. Compliance with Applicable Cultural Resources Regulations. All projects certified by the BECC must comply with all appropriate cultural resource regulations.

Sustainable Development Criteria

a. Size of Benefiting Community. Projects developed by small communities with fewer resources to develop projects independently will receive higher priority.

b. Unemployment Rate. Projects benefiting a population with a higher unemployment rate will receive higher priority.

c. Average Per Capita Income. Projects affecting a population with a lower per capita income will receive higher priority.

d. Availability of Services. Projects affecting an area with no services (i.e. water, wastewater, electricity) will receive higher priority. Projects with partial services will receive medium priority and projects which improve existing services will receive lower priority.

e. Creation of Local Employment Opportunities. If most of the jobs created by a project are within the border zone the project will receive higher priority. Projects which create jobs outside the border zone rather than within the border zone will receive lower priority.

f. Negative Direct Cultural Resource Impact at Project Site. Projects which do not create a direct negative impact on cultural resources will receive higher priority. Projects which have a direct negative impact that will be mitigated will receive medium priority and projects which have a direct negative impact that will not be mitigated will receive lower priority.

6. Community Participation

Due to the nature of BECC's mission, community acceptance of a project takes on a highly meaningful role. An interactive process has been developed to ensure meaningful community participation in the project planning and process of developing project proposals. Applicants should obtain community approval for a project by establishing consensus on the need for project implementation as well as for acceptance of user payments for service, operations, and maintenance of the proposed project.

Information Requested

a. Public Expectations. Indicate what the public expects if the project is executed. Indicate how the public was involved in the project development process and how public priorities were measured. For example, media campaigns, mailings, community

meetings, and educational activities for affected citizens of all ages and groups.

Fundamental BECC Criteria

a. Outreach Program. Projects must have an effective outreach program in order to be considered for certification by the Board.

b. Public Opinion. Projects must be widely accepted by the Public as evidenced by comments at public meetings, hearings, and letters prior to certification by the Board.

Sustainable Development Criteria

a. Education Program. Projects which include a highly effective environmental education program will receive higher priority. Projects which include an adequate environmental education program will receive medium priority and projects which include a less effective environmental education program will receive lower priority.

b. Diversity of Community Participants. Projects with strong involvement in planning by diverse project sponsors, socioeconomic community groups, and individuals will receive higher priority. Conversely, projects with little or no diversity will receive lower priority.

7. Operation and Maintenance

It is important to detect and correct any shortcomings in operations at an early stage in order to reach planned operations efficiency levels as soon as possible.

Information Requested

a. Start-Up Operation Program. Establish the sequence in which the infrastructure's operation will start as well as how any projected problems or defects in equipment or workmanship will be identified and corrected during the start-up phase.

b. Contingency Program. Define actions and corrective measures to be taken should a contingency program be needed during the start-up operations of the project.

c. Operation and Maintenance Program. A well-defined long-term operation and maintenance program is necessary. Describe the system's operation and maintenance program to include training and certification of operators, training of maintenance personnel, and preparation of operation and maintenance instruction material. Also quantify funds reserved in project budget to ensure adequate support for operation and maintenance program.

d. Safety Program. An operational safety program should be an integral part of the operation and maintenance program.

Fundamental BECC Criteria

None.

Substainable Development Criteria

a. Preliminary Operations. Projects which have more effective start-up programs will receive higher priority.

b. Long-term Operation and Maintenance. Projects which have a planned and budgeted long-term operation and maintenance program, including personnel training, will receive higher priority.

c. Safety Program. Projects offering a plan for operational safety will receive higher priority.

VII. Project Certification

After review of the proposed project, BECC staff will make a determination on whether to recommend certification of the project, based on BECC fundamental and sustainable development criteria provided in this document, to the BECC Board of Directors. The BECC should be involved in local public meetings on the projects under consideration prior to certification in order to achieve a higher level of appreciation for public support. The Board may consider and certify projects during its quarterly public meetings. Projects certified by the board will be submitted as a proposal for financing to the NADBank or to other sources of funding as appropriate. Project certification does not guarantee financing by the NADBank or by other sources.

Project proposals submitted to the BECC should be delivered to either of the following addresses:

From Mexico:

Apartado Postal

Apartado Postal 3114–J, Cd. Juárez, Chihuahua, México

Teléfonos

(91–16) 29–2395, 29–2396, 29–2398

Fax

(91–16) 29–2397

Office Location

Blvd. Tomás Fernández #7940, Torres Campestre, Piso 6, Cd. Juárez, Chihuahua, C.P. 32470, México

From USA:

Post Office Box

P.O. Box 221648, El Paso, TX 79913, USDA

Telephone

(011–52–16) 29–2395, 29–2396, 29–2398,

Fax

(011–52–16) 29–2397

[FR Doc. 95–14343 Filed 6–9–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5220–3]

Interagency Working Group on Environmental Justice: Notification of Availability of Final Federal Agency Environmental Justice Strategies

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations'' (February 11, 1994) required Federal agencies to develop Environmental Justice strategies for carrying out the requirements of the Executive Order. The following strategies are available for distribution at this time:

Publication No	Agency or Department
200–R–95–900	Agriculture.
200–R–95–908	Commerce.
200–R–95–901	Defense.
200–R–95–002	Environmental Protection Agcy.
200–R–95–903	Health, Human Services.
200–R–95–904	Housing & Urban Development.
200–R–95–905	Interior.
200–R–95–906	Justice.
200–R–95–909	Labor.
200–R–95–910	NASA.
200–R–95–907	Nuclear Regulatory Commission.
200–R–95–911	Transportation.

These strategies may be obtained, free of charge, by contacting: The National Center for Environmental Publications and Information, P. O. Box 42419, Cincinnati, Ohio 45202; Phone: 513/489–8190; FAX: 513/489–8695 (Please include publication number).

The following strategy is available directly from the agency: Department of Energy—Toni Benjamin @ (800)586–3612.

Dated: June 6, 1995.

Clarice Gaylord,

Director, Office of Environmental Justice.

[FR Doc. 95–14341 Filed 6–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5219–9]

National Advisory Council for Environmental Policy and Technology; Ecosystems Information and Assessments Committee; Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a two-day meeting of the Ecosystems Information and Assessments Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and this meeting is being held to discuss the Ecosystems Information and Assessments Committee agenda for the coming year. The Administrator has asked NACEPT to concentrate on ecosystem management and how long-term ecological, economic, and social needs can be integrated to achieve a community-based approach to environmental management.

The Ecosystems Information and Assessments Committee will concentrate on specific information and assessment issues required to support a successful community-based approach to environmental management. These issues will include discussion of the role of EPA in information access and dissemination to support community-based environmental management; discussion of information technologies available to support community-based environmental management; and discussion of the role of science in support of community-based environmental management; and discussion of appropriate methodologies in support of community-based environmental management.

The Ecosystems Information and Assessments Committee, as does NACEPT, comprises a representative cross-section of EPA's partners and constituents. However, in order to gain additional insights and perspectives from all interested parties as this committee begins its work, time has been allotted during the meeting for oral comments from the public. Any member of the public wishing to present oral comments on any of these issues can schedule an appointment by contacting Joe Sierra at the address and telephone numbers below, no later than Sept. 1, 1995. Due to time constraints, oral presentations will be strictly held to five minutes, and slots are limited. Available time slots will be allocated on a first-come first served basis to those scheduling a presentation in advance. Written comments will be accepted at any time prior to, or at, the meeting.

DATES: The two-day public meeting will be held on Wednesday, September 13, 1995, from 9 a.m. to 5 p.m., and on Thursday, September 14, 1995, from 8 a.m. to 3 p.m. On both days the meeting will be held at the Dupont Plaza Hotel, 1500 New Hampshire Ave. N.W., Washington, D.C. 20036.

ADDRESSES: Written comments should be sent to: Joseph A. Sierra, DFO, Ecosystems Information & Assessments, Committee/NACEPT, Office of Cooperative Environmental Management, U.S. EPA (1601F), 401 M St. S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Joseph A. Sierra, Designated Federal Official, Direct line (202) 260–6839, Secretary's line (202) 260–6891.

Dated: June 2, 1995.

Joseph A. Sierra,

Designated Federal Official.

[FR Doc. 95–14342 Filed 6–9–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5220–2]

National Environmental Justice Advisory Council; Notification of Public Advisory Committee Meeting(s); Open Meeting

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, notice is hereby given that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. The subcommittees are not meeting at this time. All times noted are Eastern Daylight Time. All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. For further information concerning the public comment period meeting, please contact the individual listed below. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are not available from the NEJAC. The meetings will occur at the Doubletree Hotel National Airport, 300 Army/Navy Drive, Arlington, VA, Phone: 703/416–4100, FAX: 703/416–4126.

The NEJAC will meet Tuesday, July 25, from 9 a.m. to 7:30 p.m. and Wednesday, July 26, from 9 a.m. to 3 p.m. to discuss the role of the new council, follow-up on pending items from the January meeting, discuss future items to be addressed, and receive public comments from 11–12 a.m. and 6–7:30 p.m. on Tuesday, July 25 and from 11–12 a.m. on Wednesday, July 26.

Members of the public who wish to make a brief oral presentation at the meeting(s) should contact Patricia White of PRC Environmental Management, Inc. no later than July 10, 1995 in order to have time reserved on the agenda. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments of any length (at least 35 copies) should be received no later than July 10, 1995, comments received after that date will be provided to the Council as logistics allow. They should be sent to PRC Environmental Management, Inc., 1505 PRC Drive, TM 220, McLean, VA 22102. Telephone number is (703)883–8880 or FAX (703) 556–2852.

FOR FURTHER INFORMATION CONTACT: For hearing impaired individuals or non-English speaking attendees wishing to make arrangements for a sign language or foreign language interpreter, please call or fax Patricia White at (703) 8834–8880 or (703) 556–2852 (fax).

Dated: June 6, 1995.

Clarice E. Gaylord,

Designated Federal Official, National Environmental Justice Advisory Council.

[FR Doc. 95–14340 Filed 6–9–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–250106; FRL–4958–7]

Chlorothalonil; Request for an Exception to Worker Protection Standard Early Entry Prohibition for Hand Harvest of Cantaloupe and Squash

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of receipt of petition for an exception; request for comment.

SUMMARY: EPA's Worker Protection Standard (WPS) allows the Agency to grant exceptions to the entry restrictions contained in 40 CFR 170.112(e). The State of Delaware has petitioned the Agency to allow workers to enter chlorothalonil-treated cantaloupe and squash fields to perform hand labor harvesting before expiration of the 48–hour restricted entry interval (REI). The time period for this exception request is during the harvest season from July 1 through September 15, 1995. This Notice acknowledges receipt of the exception request and invites comments from the public on the request.

DATES: Comments, data, or evidence should be submitted on or before July 12, 1995.

ADDRESSES: The Agency invites any interested person to submit written comments identified by docket number ''OPP–250106'' to: By mail: Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington,

DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–250106.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Sara Ager or Ameesha Mehta, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1121, 1921 Jefferson Davis Highway, Crystal Mall #2, Arlington, VA, (703) 305–7371, ager.sara@epamail.epa gov. or mehta.ameesha@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Early Entry Exceptions

In general, § 170.112 of the Worker Protection Standard (WPS) prohibits agricultural workers from entering a pesticide-treated area during a restricted entry interval (REI). REIs are based on the toxicity of the active ingredient in the product. REIs are specified on the pesticide product label and typically range from 12 to 72 hours. Product-specific longer REIs have been set for a few pesticides.

The WPS currently contains the following exceptions to the general prohibition against worker entry during the REI:

(1) Entry resulting in no contact with treated surfaces.

(2) Entry allowing short-term tasks (less than 1 hour) to be performed with personal protective equipment (PPE) and other conditions.

(3) Entry to perform tasks associated with agricultural emergencies.

Under these exceptions, workers engaging in early entry work are not permitted to engage in hand labor, which results in substantial contact with treated surfaces. The WPS defines hand labor as any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with treated surfaces (such as plants or soil) that may contain pesticide residues.

Under § 170.112(e) of the WPS, EPA may establish additional exceptions to the Standard's provision of prohibiting early entry to perform routine hand labor tasks. EPA will grant or deny a request for an exception based on a risk-benefit analysis. This analysis takes into account both the added risks and the benefits from allowing early entry to perform hand labor tasks.

On June 10, 1994 (59 FR 30265), EPA granted an exception which allows, under specified conditions, early entry into pesticide-treated areas in greenhouses to harvest cut roses. In the **Federal Register** of May 3, 1995 (60 FR 21953), two additional exceptions were granted which allow early-entry to perform irrigation and limited contact tasks under specified conditions.

B. Chemical-Specific Information

Chlorothalonil is a wettable granular fungicide used to control Downey Mildew disease, and has been classified as a probable human (Category B_2) carcinogen. Chlorothalonil has eye irritation concerns and other delayed health effects (kidney effects). The REI has been set for 48 hours. The pre-harvest interval (PHI) for melons and squash is at 0–days. The PHI is the time duration that must elapse, in days, from the last day of application to the first day that a crop can be harvested. The Registration Eligibility Document (RED) is scheduled for completion this year and changes to the REI and the PHI may occur.

II. Summary of Delaware's Petition

The State of Delaware has petitioned under § 170.112(e) the Agency to allow early entry by workers into chlorothalonil-treated cantaloupe and squash fields to perform hand labor harvesting 24 hours after the spray application. Delaware's petition states that if growers cannot harvest daily they will suffer substantial economic losses. The time period for the exception requested is from July 1 through September 15, 1995.

A. Need for Early Entry

According to the request, cantaloupe and squash are under severe disease pressure from Downey mildew in Delaware, and if unchecked, it can destroy the crop. The practice is to apply chlorothalonil every 7 days where Downy mildew is a problem. Delaware contends that considerable fruit could be damaged or lost during a 48–hour REI, due to the inability to harvest mature crops. The alternatives to chlorothalonil are Maneb or Penncozeb, both of which have a PHI of 5 days. Delaware states that rescheduling sprays would not be practical because the 7–day spray schedule is followed to protect against Downey mildew infection. Delaware contends that regardless of how a grower schedules sprays, there would be a 48–hour REI following a spray application, and weather and crop maturity may require harvest during that time. According to Delaware, the average plot size is 1 acre and requires 2 to 5 workers to harvest 1 hour per field. Workers would harvest several fields over an 8–hour day. Delaware also maintains that machine harvesting of cantaloupe or squash is not feasible. The State of Delaware is open to suggestions from the Agency for any means to mitigate possible eye hazards to harvest crews.

B. Proposed Terms of Exception

The State of Delaware has proposed the following protective measures:

1. No harvesting would be performed until 24 hours after application.

2. Growers harvesting cantaloupe and squash between 24 and 48 hours following the application of chlorothalonil would provide oral warnings to workers to avoid contacting their eyes with their hands and forearms or any clothing which may be in contact with the foliage during harvest. They would give this warning at the start of each workday.

3. Workers would be given instructions at the beginning of the workday to wash their hands, forearms, and faces after every 2 hours or at the conclusion of a period of picking if less than 2 hours.

4. To accommodate the increased use of water at the field decontamination site, the grower would provide 3 gallons of water or have running water available, as opposed to the recommended 1 gallon of water per worker.

The State of Delaware concludes that the costs of these measures are inconsequential when compared with the expected loss in the crop value without the exception.

C. Economic Impact

The exception request addresses 450 acres of cantaloupe and squash production, potentially affected by the Downey mildew disease. Based on Delaware's 1993 statistics, the revenue amount for cantaloupe is $2,250 per acre. The inability to harvest in time would result in decreased revenue per acre. An estimated percentage of loss was not provided, but would be determined by estimating the amount of acreage expected to be lost due to inability to harvest mature fruit during the REI after application of chlorothalonil.

As the State of Delaware indicated, if the Agency were to grant the exception, in conjunction with the measures proposed by the State of Delaware, the agricultural employer would also be required to ensure that the protective measures in § 170.112(c)(3) through (c)(9) are met. These measures specify that the PPE required, daily for early entry, is provided, cleaned, and maintained for the worker; decontamination and change areas are provided; basic training and label-specific information is provided; and measures to prevent heat-related illness are implemented, when appropriate. The Agency may add additional specific measures based on comments received.

III. Comments and Information Solicited

The Agency desires more information and is therefore, interested in receiving a full range of comments on this proposed exception. In particular, the Agency welcomes comments supported by information, including evidence demonstrating whether the risks to workers would be acceptable, given the measures proposed, and whether the use of personal protective equipment, engineering controls, any additional decontamination procedures, and safety training in these circumstances would be feasible. The Agency is interested in any available data on how heat stress can be mitigated effectively, and whether there are any reports of chlorothalonil poisoning incidents involving harvesters. The Agency also would like comments regarding the appropriate time limit on activities performed during the REI. Comments on feasible alternative fungicides or integrated pest management practices that would make early entry for hand harvesting unnecessary, and their associated costs are also solicited. The Agency would welcome any additional information concerning the economic impact (yield and/or price) on this industry of prohibiting hand harvesting during the full 48–hour REI for this fungicide. Information on average production life of squash and cantaloupe, and the stages of maturity required for different markets is further solicited.

In addition, the Agency requests comments on whether other States in which chlorothalonil is used on cantaloupe and squash would need a comparable exception. The States of Florida and Iowa have expressed a similar need for workers to enter chlorothalonil-treated cantaloupe and tomato fields to perform hand labor harvest before the expiration of the 48–hour REI. If Delaware's exception request is granted, the Agency may consider extending the exception beyond the State of Delaware, pending demonstration of need by other States. Interested parties have 30 days from the publication of this notice to comment.

A record has been established for this action under docket number ''OPP–250106'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Occupational safety and health, Pesticides and Pests.

Dated: June 8, 1995.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 95–14424 Filed 6–8–95; 1:13 pm]

BILLING CODE 6560–50–F

[OPPTS–42052R; FRL–4938–2]

RIN 2070-033

Solicitation of Testing Proposals for 1,6-Hexamethylene Diisocyanate for Negotiation of a TSCA Section 4 Enforceable Consent Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice invites manufacturers and processors of 1,6-hexamethylene diisocyanate (HDI) and other interested parties to develop and submit to EPA specific toxicity testing program proposals for this chemical. In addition, EPA is also interested in the development of a voluntary product stewardship program for HDI as a complement to the testing effort.

DATES: Written testing proposals must be received by August 11, 1995. EPA may extend the deadline for receipt of testing proposals upon a showing of good faith efforts to develop testing proposals by the initial deadline.

ADDRESSES: Submit three copies of written testing proposals to TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–B607, 401 M St., SW., Washington, DC 20460. Submissions should bear the document control number (OPPTS–42052R; FRL–4938–2). The public docket supporting this action, including comments, is available for public inspection at the above address from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPPTS–42052R; FRL–4938–2). No CBI should be submitted through e-

mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II of this document.

FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. E543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551. For specific information regarding this action or related activities, contact Keith Cronin, Project Manager, Chemical Testing and Information Branch (7405), Rm. E201E, 401 M St., SW., Washington, DC 20460, (202) 260-8157.

SUPPLEMENTARY INFORMATION:

I. Background

A. Enforceable Consent Agreement Solicitation

One, 6-hexamethylene diisocyanate (HDI) is an aliphatic diisocyanate. HDI is used in the manufacture of higher molecular biuret polyisocyanate resins and trimer polyisocyanate resins used in polyurethane paint systems. The production and uses of HDI in polyurethane paint systems results in potential exposures to substantial numbers of workers. The greatest potential for occupational exposures to HDI is in coating application operations, with an estimated 153,000 auto body repair workers having a potential for some exposure to paints containing HDI biuret and trimer. This potential for substantial exposure forms the foundation for the Agency's concern for the potential health risk that may be posed to workers by HDI.

In the **Federal Register** of May 20, 1988 (53 FR 18196), the Interagency Testing Committee (ITC) designated HDI for health effects testing for chronic toxicity, oncogenicity, and reproductive and developmental effects. EPA responded to the ITC's designation of HDI by issuing a proposed test rule in the **Federal Register** of May 17, 1989 (54 FR 21240), requiring that HDI be tested for oncogenicity, mutagenicity, reproductive toxicity, developmental toxicity, neurotoxicity, pharmacokinetics, and hydrolysis under section 4 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2603). The proposed rule contains a chemical profile of HDI, a discussion of EPA's TSCA section 4(a) findings, and the proposed test standards and reporting requirements. EPA based its proposal on section 4(a)(1)(B) of TSCA, finding that HDI is produced in substantial quantities and that there is or may be substantial human exposure from its manufacture, processing, and use.

EPA has recently reviewed significant new scientific data developed since publication of the proposed rule in 1989. The new data — which address chronic toxicity, subchronic toxicity, and mutagenicity — significantly affect the final scope of testing needs for this chemical substance. In view of these developments' impact on the scope of needed HDI testing, EPA is considering negotiating an Enforceable Consent Agreement (ECA) as an alternative to finalizing the proposed test rule to acquire the data identified in table 1. In the past, EPA, chemical manufacturers and other interested parties have frequently found that in some circumstances, the ECA process provides a more efficient, more flexible and less resource-intensive means of obtaining needed test data than the rulemaking process.

To be considered for ECA negotiation, testing proposals for HDI should address all data needs identified in table 1. If, after receiving testing proposals, EPA decides to pursue negotiations for HDI, EPA will solicit requests from individuals and others to be designated interested parties to the negotiation. EPA maintains its authority to require testing for HDI under TSCA section 4 and if negotiations do not produce an ECA, EPA intends to proceed with rulemaking to obtain the needed HDI data. EPA is also interested in receiving indications of interest in product stewardship programs as a compliment to the testing effort. Depending on what can be developed, it may be possible to offset some of the testing identified in this notice.

B. Chemical Data Needs

The ITC designated HDI for health effects testing, including chronic toxicity, oncogenicity, and reproductive and developmental effects on May 20, 1988 (53 FR 18196). EPA responded to the ITC's designation of HDI by issuing a proposed test rule in the **Federal Register** of May 17, 1989 (54 FR 21240), which would require that HDI be tested for oncogenicity, mutagenicity, reproductive toxicity, developmental toxicity, neurotoxicity, pharmacokinetics, and hydrolysis. The proposed rule contained a chemical profile of HDI, a discussion of EPA's TSCA section 4(a) findings, and the proposed test standards and reporting requirements. EPA based its proposal on section 4(a)(1)(B) of TSCA, finding that HDI is produced in substantial quantities and that there is or may be substantial human exposure from its manufacture, processing, and use.

EPA has reviewed new significant scientific data developed since publication of the proposed rule in 1989. The new data addressed chronic toxicity and subchronic toxicity which impacts the final scope of testing needs for this chemical substance. EPA believes the testing identified in table 1 is both appropriate and needed for HDI.

TABLE 1.—Proposed Testing and Test Standards For HDI

Description of Tests	Species	Exposure Route	Test Duration	Guideline/Notes
Oncogenicity	1 species other than rat.	Inhalation	2 years	40 CFR 798.3300
2 generation reproductive study	1 species	Inhalation	2 generation	40 CFR 798.4700 as proposed for revision (59 FR 42272, August 17, 1994)
Developmental toxicity study	2 species	Inhalation		40 CFR 798.4900 as proposed for revision (59 FR 42272, August 17, 1994)
Acute neurotoxicity	1 species	Inhalation		1991 Neurotoxicity Testing Guidelines
Subchronic neurotoxicity	1 species	Inhalation	90 days	1991 Neurotoxicity Testing Guidelines
Mammalian cells in culture	NA	NA	NA	40 CFR 798.5300
Salmonella typhimurium	NA	NA	NA	40 CFR 798.5265
in vivo cytogenetics	NA	NA	NA	40 CFR 798.5385
Hydrolysis	NA	NA	NA	Holdren, et al.

II. Public Docket

EPA has established a docket for this action under docket control number OPPTS–42052R, FRL–4938–2 (including comments and data submitted electronically as described below). The docket contains basic information considered by EPA in developing this action and includes:

1. Notice containing the ITC designation of HDI to the Priority List (53 FR 18196, May 20, 1988).

2. 1,6-Hexamethylene Diisocyanate proposed test rule (54 FR 21240, May 17, 1989).

3. Notice containing the proposed revision to the Reproductive and Developmental Toxicity Studies (59 FR 42272, August 17, 1994).

EPA will supplement the docket with additional information as it is received.

A record has been established for this notice under docket control number OPPTS–42052R, FRL–4938–2 (including comments and data submitted electronically as described below). A public version of this docket, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public docket is located in the TSCA Nonconfidential Information Center, Rm NE–B607, 401 M St., SW., Washington, DC 20460. Written requests for copies of documents contained in this docket may be sent to the above address or faxed to (202) 260–9555.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official notice record which will also include all comments submitted directly in writing. The official notice record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Authority: 15 U.S.C. 2603.

Dated: June 5, 1995.

Charles M. Auer,
Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 95–14344 Filed 6–9–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Abess Properties, Ltd.; 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 June 26, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Abess Properties, Ltd., Miami, Florida; and City National Bancshares, Inc., Miami, Florida, to acquire 41.71 percent of the voting shares of Turnberry Savings & Loan Association, North Miami Beach, Florida, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 6, 1995.

Jennifer J. Johnson,
Deputy Secretary of the Board.

[FR Doc. 95–14302 Filed 6–9–95; 8:45 am]

BILLING CODE 6210–01–F

Chatuge Bank Shares, 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 July 6, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Chatuge Bank Shares, Inc., Hiawassee, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Hiawassee, Hiawassee, Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Capitol Bankshares, Inc., Madison, Wisconsin to become a bank holding company by acquiring 100 percent of

the voting shares of Capitol Bank, Madison, Wisconsin, a *de novo* bank.

Board of Governors of the Federal Reserve System, June 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14301 Filed 6–9–95; 8:45 am]

BILLING CODE 6210–01–F

Community National Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 26, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community National Corporation, Grand Forks, North Dakota; to engage *de novo* through its subsidiary Document Processing and Imaging Corporation, Grand Forks, North Dakota, in providing the entire data processing service for its affiliate, Community National Bank of Grand Forks, Grand Forks, North Dakota, and providing check imaging services for Bank and other financial institutions, pursuant to § 225.25 (b)(7) of the Board's Regulation Y. These activities will be conducted in North Dakota and Minnesota.

Board of Governors of the Federal Reserve System, June 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14303 Filed 6–9–95; 8:45 am]

BILLING CODE 6210–01–F

John R. and Gwen Suderman, 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 June 26, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. John R. and Gwen Suderman, Newton, Kansas; John R. Suderman to acquire an additional 2.57 percent, for a total of 10.49 percent; John C. Suderman Revocable Trust, John R. Suderman, successor co-trustee, to retain 19.59 percent; Elga B. Suderman Revocable Trust, John R. Suderman, successor co-trustee, to retain 7.40 percent; Gwen Suderman to acquire an additional 2.57 percent, for a total of 10.49 percent; John and Gwen Suderman to acquire .91 percent; James H. and Francis G. Suderman, James H. Suderman Revocable Trust, to acquire 3.40 percent, for a total of 13.97 percent, James H. and Francis G. Suderman, co-trustees; Francis G. Suderman Revocable Trust, to acquire an additional 3.43 percent, for a total of 14.03 percent, Francis G. and James H. Suderman, co-trustees; John C. Suderman Revocable Trust, to maintain 19.59 percent, James H. Suderman, successor co-trustee; Elga B. Suderman Revocable Trust, to retain 7.40 percent of the voting shares, James H. Suderman, successor co-trustee; of Midland Financial Corporation, Newton, Kansas, and thereby indirectly acquire Midland National Bank, Newton, Kansas.

Board of Governors of the Federal Reserve System, June 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–14304 Filed 6–9–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD–832–N]

Medicare Program: HHS' Approval of NAIC Statements Relating to Duplication of Medicare Benefits

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice contains 10 disclosure statements that have been developed by the National Association of Insurance Commissioners (NAIC) and approved by the Secretary, consistent with the requirements contained in the Social Security Act, as amended in 1994. The purpose of these statements is to inform prospective buyers of health insurance policies of the extent to which benefits under the policy duplicate Medicare benefits. Each of the 10 statements applies to a different type of health insurance policy the NAIC identified as needing a disclosure statement. As of the effective date of this notice, issuers of policies that duplicate Medicare benefits must display the applicable statement in a prominent manner as part of, or together with, the application for the policy. Issuers who fail to provide the duplication notice could be subject to penalties relating to the sale of duplicate health insurance coverage.

EFFECTIVE DATE: Health insurance policy issuers subject to this notice must comply with its provisions on and after August 11, 1995.

ADDRESSES: Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents,

P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy (in paper or microfiche form) is $8. As an alternative, you may view and photocopy the **Federal Register** document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julie Walton, (410) 966–4622.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare program covers approximately 38 million beneficiaries who are age 65 or over, are disabled, or have permanent kidney failure. The program consists of two separate but complementary insurance programs, a hospital insurance program (Part A) and a supplementary medical insurance program (Part B). Although Part A is called hospital insurance, covered benefits also include medical services furnished in skilled nursing facilities or by home health agencies and hospices.

Part B covers a wide range of medical services and supplies such as those furnished by physicians or others in connection with physicians' services, outpatient hospital services, outpatient physical and occupational therapy services, and home health services. Part B also covers other items including certain drugs and biologicals that cannot be self-administered, diagnostic x-ray and laboratory tests, purchase or rental of durable medical equipment, ambulance services, prosthetic devices, and certain medical supplies.

While the Medicare program provides extensive hospital insurance benefits and supplementary medical insurance, it was not designed to cover the total cost of providing medical care for its beneficiaries. In particular:

- Benefits under both Parts A and B are reduced by certain deductible and coinsurance amounts, for which the beneficiary is responsible.
- When beneficiaries receive covered services from physicians who do not accept assignment of their Medicare claims, the beneficiaries may also be required to pay amounts in excess of the Medicare approved amount (''excess charges''), up to a limit established under the Social Security Act (the Act).
- There are a number of items generally not covered under either of Medicare's two insurance programs, such as most outpatient prescription drugs, custodial nursing home care, dental care, and eyeglasses.

Beneficiaries are liable for all of the costs listed above and may choose to purchase additional private insurance to help pay these costs.

A. Supplements to Medicare

Because Medicare does not cover the total cost of providing medical care, approximately 75 percent of Medicare beneficiaries purchase, or have available through their own or a spouse's employment or former employment, some type of private health insurance coverage to help pay for medical expenses, services, and supplies that Medicare either does not cover or does not pay in full. This coverage includes Medicare supplemental (''Medigap'') insurance; employer group health plans based on active employment or retiree coverage; hospital indemnity insurance; nursing home or long-term care insurance; and specified disease insurance. (Throughout this notice, the terms ''Medicare supplemental policy'' and ''Medigap policy'' will be used interchangeably.)

An alternative to Medigap is enrollment in a managed care plan that has a risk or cost contract with HCFA under section 1876 of the Act or a Health Care Prepayment Plan (HCPP) agreement under section 1833 of the Act. Beneficiaries who enroll in these plans are generally covered for out-of-pocket costs associated with Medicare benefits and often receive additional benefits such as prescription drugs coverage and preventive health care services at little or no cost.

In addition to the approximately 75 percent of Medicare beneficiaries with private insurance coverage, nearly 12 percent of Medicare beneficiaries are eligible for at least some Medicaid benefits. For most of these beneficiaries, Medicaid covers their Medicare coinsurance and deductible liabilities and may also provide additional benefits that Medicare does not cover, such as long term care.

B. Federal and State Regulation of Insurance

After Medicare was enacted in 1965, a number of States enacted laws and regulations governing insurance sold to supplement Medicare. However, the scope and enforcement of these laws varied considerably. Although Federal law recognizes the States as the primary regulators of insurance, in 1980 the Congress addressed certain abuses associated with the sale of health insurance to elderly Medicare beneficiaries. On June 9, 1980, Congress enacted section 507(a) of the Social Security Disability Amendments of 1980 (Public Law 96–265) (the ''Baucus Amendment''), adding section 1882 to the Act.

In adding section 1882 to the Act, Congress recognized the progress already made by the National Association of Insurance Commissioners (NAIC) and some States in the area of Medigap regulation and chose not to alter the traditional role of the States in regulating insurance.

Created in 1871, the NAIC is the organization of the chief insurance regulatory officials from all 50 States, the District of Columbia and the four territories. It provides a forum for the development of uniform public policy where uniformity is deemed appropriate by its members. The NAIC's primary instruments of public policy are model laws, regulations, and guidelines. States are free to adopt the NAIC models in their entirety, modify them, or not adopt them at all. Federal statutory requirements, however, require all States to adopt at least the minimum standards reflected in the NAIC's ''Model Regulation to Implement the Requirements of the NAIC Medicare Supplement Minimum Standards Model Act''.

The Baucus Amendment established a voluntary program under which the Federal government would certify that Medigap policies met minimum standards established by section 1882 of the Act, although policies could still be sold even if they were not certified. It also provided that if State regulatory programs met or exceeded minimum standards, including standards established by the NAIC, Medigap policies issued in those States would be deemed to meet the Federal certification requirements, and separate Federal certification would not be available in those States. However, after hearing reports of continuing abuses in the marketplace, as part of extensive Medigap reforms contained in the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) enacted on November 5, 1990, the Congress made the certification program mandatory for both States and issuers. The Congress continued to base the Federal standards on the NAIC model regulation for Medicare supplement policies and continued to leave enforcement to the States. The model regulation was amended on July 30, 1991, to reflect the requirements of the new statutory

provisions. By July 1992, all States had adopted standards equal to or more stringent than the 1991 NAIC model regulation for Medigap policies.

The Federal certification program applies exclusively to Medigap policies, as defined in section 1882 of the Act. State regulation, by contrast, includes a wider range of policies that might be sold to Medicare beneficiaries, including limited health benefit insurance such as indemnity, specified disease, and long term care policies. (In fact some States prohibit the sale of some types of policies that are the subject of this notice, such as specified disease policies). Section 1882 of the Act does, however, affect these policies, to the extent that they duplicate other coverage a beneficiary may have.

II. Anti-Duplication Provisions

A. Medigap Legislation Before 1990

Section 1882 of the Act contains a sanctions section that establishes criminal and civil money penalties designed to assist States and the Federal government in dealing with abuses identified in the various studies and investigations of Medigap insurance. Before OBRA '90 was enacted, penalties applied if an individual sold to a Medicare beneficiary any health insurance policy (that is, not just a Medigap policy) that was known to substantially duplicate the beneficiary's Medicare coverage or other health insurance. However, benefits that were payable without regard to the individual's other health benefit coverage were to be considered non-duplicative. Section 1882(d)(3)(C) of the Act further provided that the penalties for selling or issuing duplicative coverage did not apply to group policies or plans of employers or labor organizations.

B. The Omnibus Budget Reconciliation Act of 1990

Section 4354(a) of OBRA '90 amended section 1882(d)(3) of the Act to broaden the earlier anti-duplication provisions by making several significant changes. In section 1882(d)(3)(A) of the Act, it removed the qualifier ''substantially'' that modified ''duplicates'' in the earlier version of the Act. As a result, any amount of duplication became illegal. Section 4354(a) of OBRA '90 also deleted the original wording in section 1882(d)(3)(B) of the Act that provided that if the policy paid benefits without respect to other coverage (that is, the policy did not coordinate benefits with other coverage), it would be considered non-duplicative. Section 4354(a) of OBRA '90 also broadened the anti-duplication provisions to make it illegal to duplicate Medicaid as well as Medicare benefits or other private coverage. As amended by OBRA '90, section 1882(d)(3)(A) of the Act now made it:

> * * * unlawful for a person to sell or issue a health insurance policy to an individual entitled to benefits under part A or enrolled under part B of this title, with knowledge that such policy duplicates health benefits to which such individual is otherwise entitled [including Medicare and Medicaid or any private coverage the individual might have] * * *

Under section 1882(d)(3)(C) of the Act, employer group health plans continued to be exempt from these requirements.

While the provisions of OBRA '90 were intended to protect Medicare beneficiaries from abusive sales practices and prevent them from buying unnecessary and expensive duplicate coverage, it became apparent soon after enactment that a total prohibition against any amount of duplication of benefits, including even any incidental overlap, had the unintended effect of denying Medigap or other types of desired coverage, such as long term care insurance policies, to people who already had some coverage that would be at least partially duplicated by the new policy. This was true even in cases in which the beneficiary had good reasons for wanting to buy the additional coverage.

C. Social Security Act Amendments of 1994

The Social Security Act Amendments of 1994 (SSAA '94) (Public Law 103–432) retained, in section 1882(d)(3)(A)(i)(I) of the Act, the basic prohibition against selling or issuing to a Medicare beneficiary a health insurance policy with knowledge that the policy duplicates health benefits to which the individual is entitled under Medicare or Medicaid. However, the new law provides an exception to this basic prohibition.

The penalties for selling a policy that duplicates Medicare or Medicaid benefits (other than a Medigap policy to an individual entitled to any Medicaid benefits) do not apply if two conditions are met. First, all benefits under the policy must be fully payable directly to, or on behalf of, the beneficiary without regard to other health benefit coverage of the individual. Second, the issuer must display in a prominent manner as part of (or together with) the application a prescribed statement disclosing the extent to which benefits payable under the policy or plan duplicate Medicare benefits. The latter requirement only applies to policies sold or issued more than 60 days after the date that the required statements are published or promulgated under the provisions established in section 171(d)(3)(D) of SSAA '94. Therefore policies issued on or after August 11, 1995 must include these disclosure statements.

Section 171(d)(3)(D) of SSAA '94 provides that if, within 90 days of the statute's enactment, the NAIC develops and submits to the Secretary a statement for each type of non-Medigap health insurance policy and the Secretary approves all the statements as meeting the requirements of SSAA '94, the statements developed by the NAIC will be the ones prescribed by the law. The statute instructs the NAIC to consult with consumer and insurance industry representatives in developing the statements. The statute also specifies that the separate types of health insurance policies that need disclosure statements include, but are not limited to, fixed cash indemnity policies and specified disease policies. The statute gives the Secretary 30 days to review and approve or disapprove all the statements submitted by the NAIC. Upon approval of these statements the statute requires the Secretary to publish the statements.

III. Implementation of SSAA '94

A. Development of Disclosure Statements

In an effort to assure that consumer and insurance industry representatives had an opportunity to provide meaningful input into the NAIC's development of the disclosure statements, the NAIC undertook the following steps:

- On November 1, 1994, a Request for Comment was mailed to over 500 representatives of consumer organizations and insurance industry representatives as well as to the program directors of the Insurance Counseling and Assistance Programs established in each State.
- A Request for Comment was also sent to all NAIC members and the person responsible for health issues in each State as well as to all members of Congress and certain congressional health staff members.
- The Fall edition of the *NAIC NEWS* and the *NAIC Senior Counseling Letter* included a short summary of the major components of section 171 of the SSAA '94 (in particular, the provisions on duplication) and solicited input from the readers. These solicitations generated 33 written comment letters providing suggestions on how the NAIC should proceed.

• On December 2, 1994, a public hearing was conducted during an NAIC meeting in New Orleans, Louisiana. Sixteen representatives of organizations provided testimony at this hearing. On December 3 and 5, 1994, additional public meetings were held to begin drafting the statements.

• On December 13, 1994, draft disclosure statements were mailed to the same persons who received the Request for Comment. This mailing asked for comment on the draft statements and announced another public meeting. This mailing generated an additional 16 comment letters.

• On January 9 and 10, 1995, public meetings were held in Washington, D.C., to solicit further input from consumer and insurance industry representatives.

• On January 12, 1995, copies of the revised disclosure statements were faxed to the participants of the January 9 and 10 meetings requesting additional input and announcing the final public meeting. An additional 5 comment letters were received.

• On January 20, 1995, a final public meeting was held in Washington, D.C., seeking additional public comment on the statements before submitting them for adoption by the Commissioners in a plenary session held on January 21.

The NAIC delivered the statements to the Secretary on January 27, 1995. The Secretary approved them on February 24, 1995.

B. Availability of Comments Received During Development of NAIC Disclosure Statements

Comments concerning the 10 disclosure statements received during the development and approval process will be available for public inspection beginning with the date of the publication of this document. They may be viewed in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890), and in Room 132 East High Rise building, 6325 Security Boulevard, Baltimore Maryland, on Monday through Friday, of each week from 8:30 a.m. to 4:00 p.m. (phone: (410) 966–5633).

C. Criminal and Civil Money Penalties

Any issuer who is required to provide the appropriate statement as part of, or together with, the application after the effective date of this notice and fails to do so, or fails to pay benefits under the policy without regard to other coverage, is subject to the imposition of the Federal criminal and/or civil penalties that are identified in section 1882(d)(3)(A) of the Act. The criminal penalties identified in this section are fines under title 18 of the U.S. Code, which could be as much as $25,000, or imprisonment of not more than 5 years, or both. In addition to or in lieu of criminal penalties, an issuer who violates these requirements could be subject to a civil money penalty of up to $25,000 per violation. In the case of violation of these requirements by any person other than the issuer (e.g., an agent), the civil money penalty per violation may not exceed $15,000.

D. Policies Not Requiring Disclosure Statements

Certain policies do not have to carry a disclosure statement.

• Policies that do not duplicate Medicare benefits, even incidentally.

(An argument has been made that a policy that coordinates benefits with Medicare (that is, does not pay otherwise covered benefits if Medicare has already paid benefits) does not ''duplicate'' Medicare within the meaning of section 1882(d)(3) of the Act. However, this interpretation would make section 1882(d)(3)(C)(ii) of the Act meaningless. The latter provision permits duplication of Medicare only if a policy makes benefits fully payable without regard to other health benefit coverage. Therefore, section 1882 (d)(3)(C)(ii) of the Act only makes sense if the policy in question has a coordination of benefits clause. In other words, the controlling factor is whether the policy provides coverage of benefits that would duplicate Medicare benefits, not whether or not it actually pays.

A question was also raised as to whether policies that pay fixed dollar amounts that are not for specific services duplicate Medicare. Section 1882(d)(3)(D)(i)(I) of the Act specifically requires the NAIC to draft statements for policies that pay ''fixed, cash benefits.'' This represents a congressional determination that these policies ''duplicate'' Medicare.)

• Life insurance policies that contain long term care riders or accelerated death benefits.

(These types of policies are not covered under the disclosure requirements for two reasons. First, they are advertised, marketed, and sold as life products, not as ''health insurance.'' Second, as life insurance policies, these products will always pay the same amount of benefit whether the payment is made before or after death. By contrast, if a long term care insurance policyholder dies without ever filing a claim for long term care benefits, there is usually no return on his or her ''investment'' in premiums.)

• Disability insurance policies.

(Although in some contexts these types of policies may be considered to be a form of health insurance, we believe that they are not the type of insurance policies Congress intended to come within the scope of this legislation. They have traditionally been considered to be a separate type of insurance, and the Internal Revenue Code treats them differently from health insurance.)

• Property and casualty policies, including personal liability and automobile insurance.

(These types of policies may pay certain health benefits, but State laws do not consider property and casualty coverage to be ''health insurance.'')

• Employer and union group health plans.

(These types of policies are exempt from the anti-duplication prohibition under section 1882(d)(3)(C)(i) of the Act and therefore do not have to meet the requirements of section 1882 (d)(3)(C)(ii) of the Act. Such plans do not need to carry disclosure statements even though they may fit one of the above categories.)

• Managed care organizations with Medicare contracts under section 1876 of the Social Security Act.

(These plans do not ''duplicate'' Medicare benefits; rather their purpose is to actually provide all covered Medicare benefits directly to enrolled beneficiaries.)

• HCPPs that provide some or all Part B benefits under an agreement with HCFA under section 1833(a) of the Act.

(As with section 1876 managed care plans, under these agreements, HCPPs provide the actual Medicare benefits; they do not duplicate Medicare.)

E. Policies Requiring Disclosure Statements

The NAIC has identified 10 separate types of health insurance policies that each need an individualized statement of the extent to which the policy duplicates Medicare. These types of policies are—

(1) policies that provide benefits for expenses incurred for an accidental injury only;

(2) policies that provide benefits for specified limited services;

(3) policies that reimburse expenses incurred for specified disease or other specified impairments (including cancer policies, specified disease policies and other policies that limit reimbursement to named medical conditions);

(4) policies that pay fixed dollar amounts for specified disease or other

specified impairments (including cancer, specified disease policies and other policies that pay a scheduled benefit or specified payment based on diagnosis of the conditions named in the policy);

(5) indemnity policies and other policies that pay a fixed dollar amount per day, excluding long term care policies;

(6) policies that provide benefits for both expenses incurred and fixed indemnity;

(7) long-term care policies providing both nursing home and non-institutional coverage;

(8) long-term care policies primarily providing nursing home benefits only;

(9) home care policies; and

(10) other health insurance policies not specifically identified above.

IV. Policy Disclosure Statements

We have reviewed and approved the statements developed by the NAIC along with the instructions for their use and they are set forth as an addendum to this notice.

V. Other

This notice was reviewed by the Office of Management and Budget.

(Section 1882(d)(3) of the Social Security Act (42 U.S.C. 1395ss(d)(3)))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 17, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Addendum

Adopted by the NAIC on 1/21/95

Instructions for Use of the Disclosure Statements for Health Insurance Policies Sold to Medicare Beneficiaries That Duplicate Medicare

1. Federal law, P.L. 103–432, prohibits the sale of a health insurance policy (the term policy includes certificate) to Medicare beneficiaries that duplicates Medicare benefits unless it will pay benefits without regard to a beneficiary's other health coverage and it includes the prescribed disclosure statement on or together with the application for the policy.

2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).

3. State and Federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement policy.

4. Property/Casualty and Life insurance policies are not considered health insurance.

5. Disability income policies are not considered to provide benefits that duplicate Medicare.

6. The federal law does not pre-empt state laws that are more stringent than the federal requirements.

7. The federal law does not pre-empt existing state form filing requirements.

BILLING CODE 4120–01–P

[For policies that provide benefits for expenses incurred for an accidental injury only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that provide benefits for specified limited services.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any of the services covered by the policy are also covered by Medicare

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that reimburse expenses incurred for specified disease(s) or other specified impairment(s). This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that pay fixed dollar amounts for specified disease(s) or other specified impairment(s). This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare; or
- it pays the fixed dollar amount stated in the policy and Medicare covers the same event

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice care
- other approved items & services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For long-term care policies providing both nursing home and non-institutional coverage.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

- This is long term care insurance that provides benefits for covered nursing home and home care services.
- In some situations Medicare pays for short periods of skilled nursing home care, limited home health services and hospice care.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most long term care expenses.

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies providing nursing home benefits only.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

- This insurance provides benefits primarily for covered nursing home services.
- In some situations Medicare pays for short periods of skilled nursing home care and hospice care.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most nursing home expenses.

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies providing home care benefits only]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

- This insurance provides benefits primarily for covered home care services.
- In some situations, Medicare will cover some health related services in your home and hospice care which may also be covered by this insurance.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most services in your home.

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For other health insurance policies not specifically identified in the preceding statements.]

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- the benefits stated in the policy and coverage for the same event is provided by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

√ Check the coverage in **all** health insurance policies you already have.

√ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[FR Doc. 95–14314 Filed 6–9–95; 8:45 am]
BILLING CODE 4120–01–C

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose

To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: June 6, 1995.

Time: 12 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Grant Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: June 19, 1995.

Time: 2 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Sheri L. Schwartzback, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: June 22, 1995.

Time: 3 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Sheri L. Schwartzback, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: June 6, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–14288 Filed 6–9–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of one meeting of the National Institute of Mental Health which was published in the **Federal Register** on May 31, 1995 (60 FR 28417): the Extramural Science Advisory Board, July 24–25, 1995, Conference Room 6, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

The meeting was cancelled due to prior commitments of several members.

Dated: June 5, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–14287 Filed 6–9–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of one meeting of the National Institute of Mental Health which was published in the **Federal Register** on May 22, 1995 (60 FR 27115): the Board of Scientific Counselors, National Institute of Mental Health, June 13–14, 1995, Conference Room 1B07, Building 36, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

The meeting was cancelled due to prior commitments of several members.

Dated: June 5, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–14286 Filed 6–9–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

AGENDA/PURPOSE

To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: June 16, 1995.

Time: 12 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Regina Thomas, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: June 20, 1995.

Time: 11:30 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Regina Thomas, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: June 29, 1995.

Time: 11 a.m.

Place: Parklawn Building, Room 9C–101, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Maureen L. Eister, Grant Technical Assistant, Parklawn Building, Room 9C–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: June 6, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–14289 Filed 6–9–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda

To review individual grant applications.

Name of SEP: Multidisciplianary Sciences.
Date: June 30, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 5212, Telephone Conference.
Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, MD 20892, (301) 435–1177.

Name of SEP: Behavioral and Neurosciences.
Date: July 11, 1995.
Time: 9:00 p.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 6701 Rockledge Drive, Room 5178, Bethesda, MD 20892, (301) 435–1249.

Name of SEP: Chemistry and Related Sciences.
Date: July 12, 1995.
Time: 12:00 noon
Place: NIH, Rockledge II, Room 4176, Telephone Conference.
Contact Person: Dr. Mike Radtke, Scientific Review Administrator, 6701 Rockledge Drive, Room 5176, Bethesda, MD 20892, (301) 435–1728.

Name of SEP: Biological and Physiological Sciences.
Date: July 12, 1995.
Time: 1:00 p.m.
Place: NIH, Rockledge II, Room 5144, Telephone Conference.
Contact Person: Dr. Robert Su, Scientific Review Administrator, 6701 Rockledge Drive, Room 5144, Bethesda, MD 20892, (301) 435–1025.

Purpose/Agenda

To review Small Business Innovation Research Program grant applications.
Name of SEP: Behavioral and Neurosciences.
Date: July 6, 1995.
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Teresa Levitin, Scientific Review Administrator, 6701 Rockledge Drive, Room 5200, Bethesda, MD 20892, (301) 435–1259.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 6, 1995.

Susan K. Feldman,
Committee Management Officer, NIH.

[FR Doc. 95–14290 Filed 6–9–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

[FR–3918–N–01]

Privacy Act of 1974; Proposed Amendment to Systems of Records

AGENCY: Office of the Assistant Secretary for Administration, (HUD).

ACTION: Notification of proposed amendments to five existing systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Housing and Urban Development is giving notice that it intends to amend the following Privacy Act systems of records: Property Improvement and Manufactured (Mobile) Home Loans-Default (HUD/Dept-28), Mortgages—Delinquent/Default/Assigned/Temporary Mortgage Assistance Payments (TMAP) Program (HUD/Dept-32), Single Family Case Files (HUD/Dept-46), Rehabilitation Grants and Loans Files (HUD/Dept-29) and Rehabilitation Loans—Delinquent/Default (HUD/CPD–1).

EFFECTIVE DATE: These amendments will be effective without further notice on July 12, 1995, unless comments are received that would result in a contrary determination.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed amendments to the Rules Docket Clerk, Office of General Council, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of the comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, at (202) 708–2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD/Dept-28, HUD/Dept-29, HUD/Dept-32, HUD/Dept-46 and HUD/CPD–1 are being amended to allow the release of relevant sales information to prospective purchasers for sale of mortgages, loans or insurance premiums or charges. The new routine use will read as follows: To prospective purchasers—for sale of mortgages, loans or insurance premiums or charges.

The amended portion of the system notice is set forth below. Previously, the system and a prefatory statement containing the general routine uses applicable to all HUD systems of records was published in the ''Federal Register Privacy Act Issuances, 1991, Volume I.''

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Governmental Affairs of the United States Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Management and Budget (OMB), pursuant to paragraph 4c of Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records about Individuals'' dated June 25, 1993 (58 36075, July 2, 1993).

Authority: 5 U.S.C. 552a; 88 Stat. 1986; sec 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, DC, May 31, 1995.

Marilynn A. Davis,
Assistant Secretary for Administration.

HUD/Dept-28

SYSTEM NAME:

Property Improvement and Manufactured (Mobile) Home Loans-Default.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act, other routine uses are as follows:

(a) To the Department of Justice for prosecution of fraud in the course of claims collection efforts and for the institution of suit or other proceedings to effect collection of claims;

(b) To the FBI to investigate possible fraud revealed in the course of claims collection efforts.

(c) General Accounting Office—for audit purposes.

(d) Private employers and Federal agencies to facilitate collection of claims against employees.

(e) Office of Personnel Management—for offsetting retirement payments.

(f) Consumer reporting and commercial credit agencies—to facilitate claims collection consistent with Federal Claims Collection Standards, 4 CFR 102.4.

(g) To financial institutions that originated or serviced loans to give notice of disposition of claims.

(h) To title insurance companies for payment of liens.

(i) To local recording offices for filing assignments of legal documents, satisfactions, etc.

(j) To bankruptcy courts for filing of proofs of claim.

(k) To HUD contractors for debt servicing.

(l) To state motor vehicle agencies and Internal Revenue Service to obtain current addresses of debtors.

(m) To prospective purchasers—for sale of mortgages, loans or insurance premiums or charges.

HUD/Dept–29

SYSTEM NAME:

Rehabilitation Grants and Loan Files.

* * * * *

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To local agencies for monitoring and carrying out the program.

(b) To financial institutions—for providing supplemental rehabilitation funds.

(c) To credit reporting agencies, employers, financial institutions, and retail consumer credit grantors—for verification of employment and financial status.

(d) To Federal National Mortgage Association and loan servicers—for loan servicing.

(e) To Internal Revenue Service—for reporting of discharged indebtedness.

(f) To prospective purchasers—for sale of mortgages, loans or insurance premiums or charges.

HUD/Dept-32

SYSTEM NAME:

Delinquent/Default/Assigned/Temporary Assistance Payments (TMAP) Program.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To FHA—for insurance investigations.

(b) To the Internal Revenue Service and the General Accounting Office for investigations.

(c) To state banking agencies to aid in processing mortgagor complaints.

(d) To mortgagees—to verify information provided by new loan applicants and to evaluate credit worthiness.

(e) To counseling agencies for counseling.

(f) To Legal Aid—to assist mortgagors.

(g) To HUD TMAP contractor for processing TMAP.

(h) To other Federal agencies for the purposes of collecting debts owed to the Federal Government by administrative or salary offset.

(i) To prospective purchasers—for sale of mortgages, loans or insurance premiums or charges.

HUD/DEPT–46

SYSTEM NAME:

Single Family Case Files.

* * * * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To welfare agencies for fraud investigation.

(b) To the Department of Veterans Affairs for coordination with HUD in processing construction complaints.

(c) To Congressional delegation—providing information concerning status of complaints.

(d) Complainants and attorneys representing them—for review of complainant file for status and information.

(e) Builders and attorneys representing them—for review of complainant files for status information.

(f) To holders of secondary mortgages—to determine the outstanding balance due to HUD on a Secretary-held mortgage.

(g) To prospective purchasers—for sale of mortgages, loans or insurance premiums or charges.

HUD/CPD–1

SYSTEM NAME:

Rehabilitation Loans-Delinquent/Default.

* * * * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) Department of Justice—for prosecution of fraud revealed in the course of claims collection efforts and for the institution of suit or other proceedings to effect collection of claims.

(b) To the Federal Bureau of Investigation—for investigation of possible fraud revealed in the course of claims collection efforts.

(c) General Accounting Office—for audit purposes.

(d) To private employers and Federal agencies to facilitate collection of claims against employees.

(e) To the Office of Personnel Management—for offsetting retiring payments.

(f) To consumer reporting and commercial credit agencies to facilitate claims collection consistent with Federal Claims Collection Standards, 4 CFR 102.4.

(g) To financial institutions that serviced loans—to give notice of disposition of claims.

(h) To local recording offices for filing assignments of legal documents, satisfactions, etc.

(i) To bankruptcy courts for filing of proofs of claim.

(j) To local agencies that service HUD Section 312 Rehabilitation loans—to aid in the collection of delinquent loans.

(k) To counseling agencies to provide counseling and assistance in the collection of delinquent Section 312 loans in accordance with HUD/Dept–22

(l) To state motor vehicle agencies and Internal Revenue Service—to obtain current addresses of debtors.

(m) To prospective purchasers—for sale of mortgages, loans or insurance premiums or charges.

[FR Doc. 95–14250 Filed 6–9–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Las Vegas Paiute Tribe Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: None.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the

Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the Las Vegas Paiute Liquor Control Ordinance was duly adopted by the Las Vegas Paiute Tribe on February 21, 1995. The Ordinance provides for the regulation, distribution, possession, sale, and consumption of liquor on lands held in trust belonging to the Las Vegas Paiute Tribe.

DATES: This ordinance is effective as of June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., MS 2611–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Las Vegas Paiute Tribe Liquor Ordinance is to read as follows:

12–19 Findings and Purpose

12–10–010 *Legislative Control*—Federal law currently prohibits the introduction of liquor into Indian country and expressly delegates to tribes the decision regarding when and to what extent liquor transactions shall be permitted on their reservations. The Las Vegas Tribe of Paiute Indians has decided to open all lands within its jurisdiction to the possession, consumption, and sale of liquor by enacting this Title 12 (Title 12) to the Tribal Law and Order Code. Title 12 is adopted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. § 1161) and shall serve as the ''liquor ordinance'' referenced therein.

12–10–020 Control Desired—Title 12 shall govern all liquor sales and distribution on the reservation, will increase the ability of the tribe to control reservation liquor distribution and possession and will provide an additional source of revenue for tribal operations.

12–10–030 Goals of Regulation—Tribal regulation of the sale, possession, and consumption of liquor on the reservation is necessary to protect the health, security, and general welfare of the tribe, and to address tribal concerns relating to alcohol use on the reservation. In order to further these goals and to provide an additional source of governmental revenue, the tribe has adopted Title 12, which shall be liberally construed to fulfill the purposes for which it has been adopted. Title 12 is authorized by Article VII, Section 1(g) of the constitution and by-laws of the tribe which provides that the tribal council shall have the power ''[t]o enact legislation for the purpose of safeguarding and promoting the peace, safety, morals, and general welfare of the members of the Las Vegas Paiute Tribe.''

12–20 Definitions

12–20–010 *Definitions of Words*—As used in Title 12, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) ''Alcohol'' means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

(b) ''Alcoholic Beverage'' is synonymous with the term ''liquor'' as defined at section 12–20–010(d) hereof.

(c) ''Beer'' means any beverage obtained by the fermentation or infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in water and which contains not more than four percent of alcohol by volume.

(d) ''Liquor'' includes the four varieties of liquor herein defined (alcohol, spirits, wine, and malt liquor), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spiritous, vinous, or malt liquor, or otherwise intoxicating. Every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or malt liquor, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, containing more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

(e) ''Malt Liquor'' means beer, strong beer, ale, stout, and porter.

(f) ''Package'' means any container or receptacle used for holding liquor.

(g) ''Reservation'' means all lands of the tribe described or referenced in the tribe's constitution, including, but not limited to, all lands described in United States Public Law 98–203, and any lands which may in the future come within the jurisdiction of the tribe by any lawful means

(h) ''Sale'' and ''Sell'' mean exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as ''beer'' or by any name whatsoever commonly used to describe ''malt liquor'' or ''liquor'' or ''wine'' by any person to any person.

(i) ''Spirits'' means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(j) ''Strong Beer'' means any beverage obtained by the alcoholic fermentation or infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in water, including ale, stout, and porter, containing more than four percent of alcohol by weight.

(k) ''Title 12'' means this liquor code, which shall serve the tribe as the liquor ordinance referenced at 18 U.S.C. § 1161.

(l) ''Tribe'' means, and ''Tribal'' refers to, the Las Vegas Paiute Tribe, a federally recognized tribe of Native American Indians, listed at 58 FR 54364, 67 as the ''Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada.''

(m) ''Tribal Council'' shall mean the duly elected tribal council of the tribe, which is the governing body of the tribe.

(n) ''Tribal Court'' means the tribal courts of the tribe as established pursuant Title 1 of the Tribal Law and Order Code.

(o) ''Wine'' means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during, or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding seventeen percent of alcohol by weight.

12–30 Sales, Distribution, Possession, Consumption

12–30–010 *Authorization*—The tribe, its members and other persons including, but not limited to, corporations, partnerships, associations and natural persons are hereby authorized to introduce, sell, distribute, warehouse, possess and consume alcoholic beverages within the reservation, in accordance with the laws of the State of Nevada (including Nevada liquor licensing provisions); provided, however, that any person or entity, other than the tribe, which sells alcoholic beverages within the reservation must first obtain a tribal liquor license from the tribal council and such sales shall be subject to taxes and license fees as may be established by duly enacted resolution of the tribal council.

12–30–020 *Distribution of Taxes and Fees*—All taxes and license fees related to the sale or introduction of

alcoholic beverages on the reservation shall be remitted to the tribal council through the tribal secretary, who shall keep accurate records of all such receipts, and shall be subject to distribution by the tribal council in accordance with its usual appropriation procedures for governmental and social services.

12–30–030 *Tribal Liquor License elements*—Tribal liquor licenses shall authorize the holder thereof to sell alcoholic beverages at wholesale or at retail in cans, bottles or any other package within a defined area; provided, however, that a tribal liquor license shall be valid only if the holder thereof is in compliance with the laws of any other jurisdiction which may have any authority with regard to liquor sales and regulation on the reservation.

Tribal liquor licenses shall set forth the location and description of the building and premises for which each license is issued and shall define the area where the holder of each tribal liquor license may sell alcoholic beverages for a period of one year.

12–40 Penalties

12–40–010 *General*—Notwithstanding any other provision of Title 12, no penalty may be imposed pursuant or related to title 12 in contravention or in excess of any limitation imposed by the Indian Civil Rights Act of 1968, 82 Stat. 77, 25 U.S.C.A. § 1301 *et seq.* (''ICRA'') or other applicable Federal law.

12–40–020 *Illegal Transportation, Still, or Sale Without Permit*—Any person who, within the reservation and without a valid tribal liquor license, sells or offers for sale or transport in any manner any liquor within the boundaries of the reservation in violation of Title 12, or who operates or has in his possession any spirit distillation device or any substance meant or specifically concocted to be distilled into liquor (not including devices or mash related to the home manufacture of beer, strong beer, or wine solely for the purpose of personal consumption and not for sale), shall be guilty of a Class A Offense as defined in the Tribal Law and Order Code.

12–40–030 *Illegal Purchase of Liquor*—Any person who buys liquor within the boundaries of the reservation other than from an individual or entity properly licensed pursuant to Title 12 shall be guilty of a Class A Offense as defined in the Tribal law and Order Code.

12–40–040 *Furnishing Liquor to Minors*—Except in the case of liquor given or administered to a person by his physician or dentist for medicinal purposes, no person under the age of 21 years shall consume, acquire or have in his possession any alcoholic beverages except when such beverages are used in connection with religious services. No person shall permit any other person under the age of 21 to consume liquor on his premises or on any premises under his control except in those situations set out in this section. Any person violating this section shall be guilty of a Class A Offense as defined in the Tribal Law and Order Code.

12–40–050 *Sales of Liquor to Minors*—Any person who shall sell any liquor to any person under the age of 21 years shall be guilty of a Class A Offense as defined in the tribal law and order code and shall be further subject to forfeit any license issued pursuant to Title 12; provided, however, that the forfeiture of any license issued pursuant to Title 12 may occur only after notice and a hearing according to the procedures set forth in section 12–50–020 of Title 12.

12–40–060 *Unlawful Transfer of Identification*—Any person who transfer in any manner an identification of age to a minor for the purpose of permitting such minor to obtain liquor shall be guilty of a Class A Offense as defined in the Tribal Law and Order Code. Corroborative testimony of a witness other than the minor shall be a requirement of conviction under this section.

12–40–070 *Possession of False or Altered Identification*—Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of a Class D Offense as defined in the Tribal Law and Order Code.

12–40–080 *General Penalties*—Any person guilty of a violation of Title 12 for which no penalty has been specifically provided shall be liable upon conviction for the penalty prescribed for Class A Offenses in the Tribal Law and Order Code.

12–40–090 *Identification; Proof of Minimum Age*—Where there may be a question of a person's right to purchase liquor by reason of his age, such person shall be required to present any one of the following officially issued cards of identification which shows his correct age and bears his signature and photograph:

(a) Liquor control authority card of identification of any state;

(b) Driver's license of any state or ''Identicard'' issued by any state Department of Motor Vehicles;

(c) United States Active Duty Military Identification;

(d) Passport; or

(e) Las Vegas Paiute Tribal Identification or Enrollment Card.

12–40–100 *Illegal Items Declared Contraband*—Alcohol beverages which are possessed contrary to the terms of Title 12 are hereby declared to be contraband. Any officer who shall make an arrest under this section shall seize all contraband which he shall have the authority to seize consistent with the tribe's constitution, the Tribal Law and Order Code, the ICRA and any other applicable Federal law.

12–40–110 *Non-Indian Violations*—Nothing in Title 12 shall be construed to require or authorize the criminal trial and punishment by the tribal court of any non-Indian except to the extent allowed under Federal law. In general, when any provision of Title 12 is violated by a non-Indian, he or she shall be referred to state and/or Federal authorities for prosecution under applicable law. It is the expressed intent of the tribe that any non-Indian referred to state and/or Federal authorities pursuant to this section be prosecuted to the furthest extent of applicable law.

12–50 Abatement of Continuing Violations

12–50–010 *Declaration of Nuisance*—Any room, house, building, boat, vessel, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of Title 12 and all property kept in and used in maintaining such place, including tribal liquor licenses related to any such property, are hereby declared to be a common nuisance.

12–50–020 *Institution of Action*—The Chairman of the tribal council or the Chief of the tribal law enforcement department may institute and maintain an action in the tribal court in the name of the tribe to abate and perpetually enjoin any nuisance declared under article 12-50 of Title 12 or any other violation of Title 12. The plaintiff shall be required to file grounds in the action, and restraining orders, temporary injunctions, and permanent injunctions may be granted in the case as in other injunction proceedings. Upon final judgment against the defendant, the tribal court may order the forfeiture of any license issued pursuant to Title 12 and that the offending room, house, building, boat, vessel, vehicle, structure, or place be closed for a period of one year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less than $1,000.00 payable to the tribe, which bond shall be conditioned on the agreement of such

person that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provisions of Title 12 and that such person will pay all fines, costs and damages assessed against him for any violation of Title 12. If any conditions of the bond are violated, the whole amount may be recovered as a penalty for the use of the tribe. Any action taken under this section shall be in addition to any criminal penalties provided for under Title 12 or any other applicable provision of the Tribal Law and Order Code.

12–50–030 *Abatement of Nuisance*—In all cases where any person has been convicted of a violation of Title 12, an action may be brought in tribal court to abate as a nuisance any real estate or other property involved in the commission of the offense, and in any such action a certified copy of the record of such conviction shall be admissible in evidence and *prima facie* evidence that the room, house, vessel, boat, building, vehicle, structure, or place against which such action is brought is a public nuisance.

12–60 Severability and Effective date

12–60–010 *Severability*—If any application or provision, or any portion of any provisions, of Title 12 is determined by review of any court of competent jurisdiction to be invalid, such adjudication shall not render ineffectual the remaining portions of Title 12 or render such provisions automatically inapplicable to other persons or circumstances.

12–60–020 *Effective Date*—Title 12 shall be effective as a matter of tribal law on the date of its adoption by the tribal council and effective as a matter of Federal law on such date as the Secretary of the Interior certifies and publishes the same in the **Federal Register**.

12–60–030 *Inconsistent Enactments Rescinded*—Any and all prior enactments of the tribal council which are inconsistent with the provisions of Title 12 are hereby rescinded to the extent of such inconsistency.

12–60–040 *Application of 18 U.S.C. 1161*—All acts and transactions under Title 12 shall be in conformity with the laws of the State of Nevada to the extent required under 18 U.S.C. 1161.

12–60–050 *Jurisdiction and Sovereign Immunity*—Nothing in Title 12 shall be construed to limit the jurisdiction of the tribe, the tribal court or tribal law enforcement personnel and nothing herein shall limit or constitute a waiver of the sovereign immunity of the tribe or its officers, instrumentalities and agents or authorize any form a prospective waiver of such sovereign immunity. Nothing in Title 12 shall be construed as an admission that any body politic, other than the tribe, has jurisdiction over any matter arising from or related to the reservation, except to the extent such jurisdiction is confirmed by Federal law.

Dated: May 24, 1995.

Ada E. Deer,

Assistant Secretary-Indian Affairs.

[FR Doc. 95–14252 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–02–M

National Park Service

Transcontinental Gas Pipe Line Co., Big Thicket National Preserve Hardin and Jasper Counties, TX; Availability of Plan of Operations and Environmental Assessment Pipeline Removal and Reclamation and Abandonment of Pipeline Easement

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Transcontinental Gas Pipe Line Company a Plan of Operations for removal of a pipeline and reclamation and abandonment of pipeline easement within Big Thicket National Preserve, located within Hardin and Jasper Counties, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas. Copies are available from the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas 77701, and will be sent upon request.

Dated: June 5, 1995.

Jerry L. Rogers,

Superintendent, Southwest System Support Office.

[FR Doc. 95–14333 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–70–M

Notice of Inventory Completion for Human Remains and Associated Funerary Objects in the Possession of the Heard Museum, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of Inventory for Native American human remains and associated funerary objects presently in the possession of the Heard Museum, Phoenix, AZ.

The human remains and associated funerary objects consist of three sets of human remains and associated funerary objects which were collected by Frank Midvale from La Ciudad Ruin, a Hohokam site in Phoenix, Arizona between 1927 and 1929. Artifacts from the site, which was located on property then owned by the Museum, were transferred to the Museum for preservation as a field collection subsequent to their excavation. One set of remains (NA-SW-SD-A1–15) consists of a cremation associated with a Gila Red bowl and an unidentified potsherd. The second set (NA-SW-SD-A1–18) consists of a cremation associated with a Gila Red jar. The third set (NA-SW-SD-T–1) consists of cranial material. These materials were originally cataloged by the Museum as Salado, but were reidentified in 1994 as Hohokam, based on the La Ciudad site provenience and reevaluation of the associated funerary objects.

In 1990, the Salt River Pima-Maricopa Indian Community adopted a joint policy statement along with three other central Arizona tribes, which includes the Ak-Chin Indian Community, Gila River Indian Community, and the Tohono O'Odham Indian Nation. The policy statement asserted that these four communities claim an affiliation to ancestors defined as ''Hohokam''. In October 1993, the Museum supplied a summary and inventory of its holdings identified as Pima, Maricopa, Hohokam, Salado or Sinagua to the affiliated central Arizona tribes.

On April 19, 1995, a representative of the Salt River Pima-Maricopa Indian Community visited the Museum for an initial consultation, during which time it was determined that the tribe would seek return of the human remains and associated funerary objects from La Ciudad Ruin as part of their annual reburial ceremony. Subsequently, the Salt River Pima-Maricopa Indian Community has requested these three sets of remains and associated funerary objects in a letter dated April 20, 1995. The Museum's Board of Trustees responded positively to the request on April 26, 1995.

Inventory of the human remains and funerary objects and review of accompanying documentation from the three sets of Native American human remains listed above indicate that no known individuals were identifiable.

Based on the above mentioned information, officials of the Heard Museum have determined that,

pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the Native American human remains and the Salt River Pima-Maricopa Indian Community. All of the objects are reasonably believed to have been placed with or near individual Native American human remains either at the time of death or later as part of a death rite or ceremony.

This notice has been sent to officials of the Salt River Pima-Maricopa Indian Community, the Ak-Chin Indian Community, Gila River Indian Community and the Tohono O'Odham Indian Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Martin Sullivan, Director, The Heard Museum, 22 E. Monte Vista Road, Phoenix Arizona 85004–1480, telephone (602) 252–8840 before July 12, 1995. Repatriation of the cultural item to the Salt River Pima-Maricopa Indian Community may begin after that date if no additional claimants come forward.

Dated: June 2, 1995.

Francis P. McManamon,

Departmental Consulting Archeologist Chief, Archeological Assistance Division.

[FR Doc. 95–14295 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion of Native American Human Remains from Kaena Point, Oahu, HI in the Possession of the Hood Museum of Art, Dartmouth College

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, that are currently in the possession of the Hood Museum of Art at Dartmouth College, Hanover, New Hampshire.

A detailed inventory and assessment of these human remains has been made by museum staff in consultation with representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei,* a Native Hawaiian organization as defined in 25 U.S.C. 3001 (11).

The human remains identified by the accession number 13–143–6547 include a skull and mandible. From observations and measurements taken around 1962, it was determined that the ''cranial index'' relates to either the Hawaiian or Society Islands. Two sets of human remains identified as 13–143–6548 (thirteen vertebrae) and 13–143–6549 (one left culcaneus and one tarsus), are not morphologically diagnostic, but are identified as having been collected in Hawaii.

All three sets of human remains were probably acquired around 1900 by a private collector and were subsequently donated to the Dartmouth College Museum in 1939 by his son. Accession records suggest that all of the human remains were acquired at the same time from Kaena Point in the northwest corner of Oahu, Hawaii. Consultation with representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* has helped establish Kaena Point as a well known Native Hawaiian burial site. Representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* know of no non-Hawaiian occupation or burials in and around Kaena Point.

Based on the above mentioned information officials of the Hood Museum of Art have determined, in consultation with *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei,* that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can reasonably be traced between the three sets of human remains described above and present day Native Hawaiian organizations.

Representatives of culturally affiliated Native Hawaiian organizations are advised that the human remains have been transferred, on loan, to representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* who have agreed to delay reinterment until July 12, 1995. This notice has been sent to officials of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei,* the Office of Hawaiian Affairs and the O'ahu Burial Committee. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact Kellen G. Haak, Registrar and Repatriation Coordinator, Hood Museum of Art, Dartmouth College, Hanover, NH 03755, telephone (603) 646–3109 and Kunani Nihipali, *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei,* P.O. Box 190 Hale'iwa, HI 96712–0190 telephone: (808)595–6575 before July 12, 1995. Repatriation of these remains to *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* may begin after that date if no additional claimants come forward.

Dated: June 6, 1995

Richard C. Waldbauer

Acting, Departmental Consulting Archeologist,

Acting, Chief, Archeological Assistance Division

[FR Doc. 95–14294 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–70–F

Notice of Completion of Inventory of Native American Human Remains from Hawaii, Formerly in the Possession of the Joseph Moore Museum of Natural History, Earlham College, Richmond, IN

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 Joseph Moore Museum of Natural History, Earlham College, Richmond, Indiana.

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 Native Hawaiian organization recognized at 25 U.S.C. 3001 (6).

The two sets of remains were given to the museum in 1875 by unknown persons. Accession records indicate that one set of remains came from ''* * * a sandbed east of Honolulu, Oahu, * * *'' This locality is presumably in the ahupua'a of Waikiki, in the moku of Kona. These remains consist of a complete cranium (without lower jaw) of an adult. The second set is described as comming from ''Laico, Oahu.'' The second location presumably refers to La'ie, which is an ahupua'a in the moku of Ko'olauloa, on the north shore of Oahu. These remains consist of a frontal bone of a juvenile.

Inventory of the human remains and funerary objects and review of accompanying documentation from the two sets of Native American human remains listed above indicate that no known individuals are identifiable.

Based on the above mentioned information, officials of the Joseph Moore Museum of Natural History, Earlham College, have determined pursuant to 25 U.S.C. 3001 (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, on loan, to representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* who have agreed to delay reinterment until July 12, 1995, after which they may be reinterred. This notice has been sent of officials of the Office of Hawaiian Affairs, *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei,* and to the Oahu burial council. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact Dr. John Iverson, Joseph Moore Museum of Natural History, Earlham College, Richmond, IN 47374, telephone: (317) 983–1405 and Kunani Nihipali, *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei,* P.O. Box 190 Hale'iwa, HI 96712–0190 telephone: (808)595–6575 before July 12, 1995.

Dated: June 2, 1995.

Francis P. McManamon,

Departmental Consulting Archeologist Chief, Archeological Assistance Division.

[FR Doc. 95–14293 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The U.S. Agency for International Development (USAID) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, (44 U.S.C. Chapter 35). Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee Poehls, (202) 736–4743, M/AS/ISS Room 930B, N.S., Washington, D.C. 20523.

Date Submitted: May 9, 1995.

Submitting Agency: U.S. Agency for International Development.

OMB Number: OMB 0412–0536.

Form Number: AID 1420–62.

Type of Submission: Renewal.

Title: Report of Medical Examination.

Purpose: When USAID hires contractor personnel for overseas assignments, the contractors are required to obtain a physician's certification that they are physically qualified to engage in the type of activity for which they will be employed. Physicians who do not regularly deal with patients going to lesser developed countries do not appreciate the difficulties of providing even the most basic medical services in many such areas. This form requests the minimum information needed in order to make a determination as to whether or not the individual should travel to the post in question. The State Department's Office of Medical Service (M/MED) reviews the form prior to departure to insure the Mission or Embassy medical facility can meet special medical needs of the contractor. Thus the need for future medical evacuations would be reduced, since M/MED would find most existing medical problems that could not be dealt with locally and the individual would then most likely be denied approval to post.

Annual Reporting Burden: Respondents: 1650, Annual responses: 1650; Annual burden hours: 6600.

Reviewer: Jeffery Hill (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: May 15, 1995.

Genease E. Pettigrew,

Chief, Information Support Services Division, Office of Administrative Service, Bureau of Management.

[FR Doc. 95–14251 Filed 6–9–95; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than June 22, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 22, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of May, 1995.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
ABC Mfg. Corp. (Wkrs)	Ashland, MS	05/30/95	05/10/95	31,062	Ladies' jackets.
Amsco International (Wkrs)	Erie, PA	05/30/95	05/05/95	31,063	Sterilizers for hospitals.
Elegante Sleepwear (Wkrs)	San German, PR	05/30/95	05/11/95	31,064	Sleepwear.
Heinz Pet Products, Inc. (UFCW)	Bloomsburg, PA	05/30/95	05/15/95	31,065	Food can lids.
Rich's Products (Wkrs)	Dayton, OH	05/30/95	05/07/95	31,066	Pies, cakes, etc.
UMC Petroleum Corporation (Wkrs)	Houston, TX	05/30/95	05/18/95	31,067	Exploration & production of oil & gas.
Clinton Swan (ACTWU)	Carlstadt, NJ	05/30/95	04/25/95	31,068	Men's suits.
Rainbow Fashions Inc. (ILGWU)	Pittston, PA	05/30/95	05/16/95	31,069	Dresses.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Forster Inc. (Wkrs)	Wilton, ME	05/30/95	05/15/95	31,070	Croquet sets.
Pittston Coal Co. (Wkrs)	McClure, VA	05/30/95	05/16/95	31,071	Coal.
Softhard Systems, Inc. (Wkrs)	Houston, TX	05/30/95	04/11/95	31,072	Assembly of computers.
Timberland Manufacturing, Inc. (Wkrs)	Boone, NC	05/30/95	04/28/95	31,073	Boots and shoes.
Timberland Manufacturing, Inc (Wkrs)	Mountain City, TN	05/30/95	04/28/95	31,074	Boots and shoes.
Gentek Building Products, Inc (Co)	Woodridge, NJ	05/30/95	03/24/95	31,075	Vinyl siding.
Hercules, Inc. (Wkrs)	McGregor, TX	05/30/95	05/12/95	31,076	Rocket motors.
Sundstrand Aerospace/Electric Power (IUE).	Lima, OH	05/30/95	05/17/95	31,077	Aircraft generators & power controls.
Penn Ventilator (Wkrs)	Keyser, WV	05/30/95	05/17/95	31,078	Automatic temperature control dampers.
Picker International (Wkrs)	Cleveland, OH	05/30/95	05/13/95	31,079	Medical imaging equipment.
Picker International (Wkrs)	Pittsburgh, PA	05/30/95	05/13/95	31,080	Medical imaging equipment.
B&B Equipment Co. (Wkrs)	Plumsteadville, PA	05/30/95	04/25/95	31,081	Insect exterminating equipment.
Barco of California (Wkrs)	Huntsville, TN	05/30/95	05/16/95	31,082	Health care uniforms.
R.J. Mfg. Co. (Wkrs)	York, PA	05/30/95	05/15/95	31,083	Children's & ladies' blouses & dresses.
Blind Design, Inc (Wkrs)	Tempe, AZ	05/30/95	05/11/95	31,084	MIni blinds.
Blind Design, Inc. (Wkrs)	San Diego, CA	05/30/95	05/11/95	31,085	Mini blinds.
Carus Chemical Company (Co.)	Peru, IL	05/30/95	05/19/95	31,086	Potassium permanganate.
Crown Pacific Limited Partnership (UBC)	Thompson Falls, MT.	05/30/95	05/15/95	31,087	Lumber.
Exeter Drilling (Wkrs.)	Denver, CO	05/30/95	04/18/95	31,088	Oil & gas drilling.
Flexel, Inc. (Co.)	Covington, IN	05/30/95	05/12/95	31,089	Cellephane.
Flexel, Inc. (Co.)	Atlanta, GA	05/30/95	05/12/95	31,090	Cellephane.
Flexel, Inc. (Co.)	Tecumseh, KS	05/30/95	05/12/95	31,091	Cellephane.
Paragon Dye (ACTWU)	Paterson, NY	05/30/95	05/18/95	31,092	Dyeing & finishing of textiles.
Planergy New York, Inc. (Wkrs)	East Syracuse, NY	05/30/95	05/18/95	31,093	Energy management services.

[FR Doc. 95–14349 Filed 6–9–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00342]

Johnson & Johnson, Personal Products Company Division, North Little Rock, Arkansas; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued an Amended Certification for NAFTA Transitional Adjustment Assistance on March 3, 1995, applicable to all workers at the subject firm. The amended notice was published in the **Federal Register** on March 22, 1995 (60 FR 15164).

New information received from the company show that employees of Personal Products Company's Warehouse Department were inadvertently omitted from the certification.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to include the Personal Products Company Warehouse Department workers in North Little Rock, Arkansas.

The amended notice applicable to NAFTA—00342 is hereby issued as follows:

''All workers in the Carefree, Serenity Thin Pads, Serenity Guards, and Warehouse Departments of the Personal Products Company Division of Johnson & Johnson, located in North Little Rock, Arkansas who became totally or partially separated from employment on or after January 23, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, DC this 24th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–14350 Filed 6–9–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,863]

Johnson Controls, Inc., a/k/a Johnson Controls Battery Group, Inc., Garland, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 1, 1995, applicable to all workers of Johnson Controls, Incorporated, located in Garland, Texas. The notice was published in the **Federal Register** on May 17, 1995 (60 FR 26459).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The investigation findings show that the claimants' wages for Johnson Controls, Inc. are being reported under Johnson Controls Battery Group, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Johnson Controls, Incorporated irrespective to which account their unemployment insurance (UI) taxes are paid.

The amended notice applicable to TA–W–30,863 is hereby issued as follows:

''All workers of Johnson Controls, Incorporated, a/k/a Johnson Controls Battery Group, Inc., Garland, Texas who became totally or partially separated from employment on or after March 15, 1994, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed in Washington, DC this 30th day of May, 1995

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–14351 Filed 6–9–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00264]

NETP, Inc., Niagara Falls, New York; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 2, 1994, applicable to all workers at the subject firm. The notice was published in the **Federal Register** on December 16, 1994 (59 FR 65078).

New information received from the company shows that separations at the subject plant continue to occur. Separations are not limited to those workers producing 5 circuit and 7 circuit assemblies of electrical wire harnesses. Workers in all areas of support services and production of electrical wire harnesses are affected.

The intent of the Department's certification is to include all workers who are adversely affected by increased imports.

Accordingly, the Department is amending the certification to expand the coverage to all workers of NETP, Inc.

The amended notice applicable to NAFTA–00264 is hereby issued as follows:

''All workers of NETP, Inc., Niagara Falls, New York who became totally or partially separated from employment on or after January 23, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, DC, this 26th day of May 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–14352 Filed 6–9–95; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Audit Guide for LSC Recipients and Auditors

AGENCY: Legal Services Corporation.

ACTION: Proposed guideline; extension of comment period.

SUMMARY: This notice extends for an additional 10 days the comment period on the proposed Legal Services Corporation (LSC) Audit Guide for Recipients and Auditors, that was published in the **Federal Register** on May 24, 1995 (60 FR 27562–27567). Respondents are now given a 40-day period from the original date of publication to comment.

DATES: Comments should be received in writing on or before July 3, 1995. Late comments will be considered to the extent practicable. Where possible, comments should reference applicable paragraph numbers in the proposed revision. To facilitate conversion of the comments in computer format for analysis, respondents are asked to send a copy of the comments on either a 3.5 or 5.25 inch diskette in ASCII format.

ADDRESSES: Comments should be submitted in writing to the Office of Inspector General, Legal Services Corporation, 750 First St., NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Karen M. Voellm, Chief of Audits (202) 336–8830.

Dated: June 7, 1995.

Victor Fortuno,

General Counsel.

[FR Doc. 95–14353 Filed 6–9–95; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–038]

National Environmental Policy Act; Sounding Rocket Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of draft supplemental environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216, subpart 1216.3), NASA has prepared and issued a draft supplemental environmental impact statement (DSEIS) for its Sounding Rocket Program (SRP). This DSEIS addresses the programmatic changes to the SRP that have occurred since the issuance of the 1973 final environmental impact statement (FEIS) for the NASA SRP and analyzes the site-specific environmetnal impacts at the three principal U.S. launch sites located at: Wallops Island, Virginia; Fairbanks, Alaska; and White Sands, New Mexico.

DATES: Comments on the DSEIS must be provided in writing to NASA on or before July 27, 1995 or 45 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the Sounding Rocket DSEIS, whichever is later.

ADDRESSES: Comments should be addressed to Mr. William Johnson, Goddard Space Flight Center, Wallops Flight Facility, Code 840, Wallops Island, Virginia 23337. The DSEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW., Washington, DC 20546.

(b) NASA, Goddard Space Flight Center/Wallops Flight Facility, Public Affairs Office, Wallops Island, VA 23337.

(c) Eastern Shore Public Library, Accomac, VA.

(d) University of Alaska–Fairbanks Library, Fairbanks, AK.

(e) Alamogordo Library, Alamogordo, NM.

In addition, the DSEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(f) NASA, Ames Research Center, Moffett Field, CA 94035 (415–604–4191).

(g) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–3047).

(h) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).

(i) Jet Propulsion Laboratory, NASA Resident Office, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(j) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8612).

(k) NASA, Kennedy Space Center, FL 32899 (407–867–2622).

(l) NASA, Langley Research Center, Hampton, VA 23665 (804–864–6125).

(m) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2902).

(n) NASA, Marshall Space Flight Center, AL 35812 (205–544–4523).

(o) NASA, Stennis Space Center, MS 39529 (601–688–2164).

Limited copies of the DSEIS are available by contacting Mr. William B. Johnson, at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT: William B. Johnson, 804–824–1099.

SUPPLEMENTARY INFORMATION: NASA's SRP is a suborbital spaceflight program used primarily in support of space and earth sciences research activities sponsored by NASA. This program also provides applicable support to other government agencies as well as international sounding rocket groups and scientists. The SRP is a relatively low-cost, quick response effort that

provides approximately 30 flight opportunities per year to space scientists involved in research relating to the upper atmosphere, plasma, physics, solar physics, planetary atmospheres, galactic astronomy, high energy astrophysics, and microgravity. The launch vehicles used are relatively small.

The proposed action and NASA's preferred alternative is the continued operation of the NASA SRP as presently managed. The DSEIS focuses on programmatic changes in the NASA SRP that have taken place since the original FEIS was issued in 1973 by deleting launch vehicles that are no longer used, adding new launch vehicles and systems currently being used, and reflecting changes in Federal and state environmental laws and regulations. The DSEIS addresses both the overall programmatic environmental impacts of the SRP and the site-specific environmental impacts at and in the area of the three principal domestic sounding rocket sites: Goddard space Flight Center/Wallops Flight Facility, Wallops Island, Virginia; Poker Flat Research Range, Fairbanks, Alaska; and White Sands Missile Range, White Sands, New Mexico.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 95–14362 Filed 6–9–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–037]

Intent To Grant a Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant DuPont Advanced Composites, P.O. Box 6108, Newark, DE 19714, a partially exclusive license to practice the inventions described in U.S. Patent Application Numbers 08/209,512 entitled ''Phenylethnyl Terminated Imide Oligomers,'' which was filed on March 3, 1994; and 08/330,773 entitled ''Imide Oligomers Endcapped with Phenylethynyl Phthalic Anhydrides and Polymers Therefrom,'' which was filed on October 28, 1994, both of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

The partially exclusive license will contain appropriate terms and conditions to be negotiated in accordance with the Department of Commerce Licensing Regulations (37 CFR part 404). NASA will negotiate the final terms and conditions and grant the license unless, within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentation. The Director of Patent Licensing will review all written responses to the notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Comments to the notice must be received by August 11, 1995.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing at (202) 358–2041.

Dated: June 2, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–14312 Filed 6–9–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric & Gas Company; South Carolina Public Service Authority; Virgil C. Summer Nuclear Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–12, issued to South Carolina Electric & Gas Company and South Carolina Public Service Authority, (the licensee), for operation of the Virgil C. Summer Nuclear Station, Unit No. 1, located in Fairfield County, South Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensee to discontinue the seismic monitoring program (which includes a network of seismometers near the Monticello Reservoir) that was put in place to monitor the seismic activity associated with the impoundment of the Monticello Reservoir. The monitoring program is currently funded by the licensee and operated and maintained by the University of South Carolina.

The proposed action is in accordance with the licensee's application for amendment dated March 6, 1955, as supplemented May 5, 1995.

The Need for the Proposed Action

The proposed action was requested because the licensee believes that the burden and costs of the seismic monitoring program for reservoir induced seismicity are no longer justified.

Environmental Impacts of the Proposed Action

The licensee's proposal will allow the seismic monitoring equipment to be permanently removed from current locations. This equipment is portable and is located around the Monticello Reservoir. The equipment is used solely for monitoring seismic activity around the reservoir and is not used for the operation of the plant. Based on the licensee's submittals and the discussions with other agencies and persons, the staff found that the removal of this equipment will have no significant impact on the environment.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar since the proposed amendment will allow the licensee to remove the seismic monitoring equipment and the licensee's present license condition does not prohibit the licensee from removing and relocating the seismic monitoring equipment from

current locations. Thus, the current license condition already allows the licensee to permanently abandon the current monitoring sites (as long as alternate sites are selected).

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Virgil C. Summer Nuclear Station, Unit 1.

Agencies and Persons Consulted

On April 14, 1995, the staff consulted with Mr. John Sims, Deputy of External Research, U.S. Geological Survey regarding the type of equipment used for seismic monitoring networks. Mr. Sims commented that the equipment was generally compact; therefore, he judged that there were no significant environmental impacts associated with the removal of the equipment and abandonment of the sites.

On April 24, 1995, the staff consulted with Dr. Pradeep Talwani, of the University of South Carolina (USC) regarding the planned disposition of the network monitoring sites if the licensee stops funding the program. Dr. Talwani maintains the seismic monitoring system for the licensee. Dr. Talwani stated that if the licensee stops funding the network, all but one of the monitoring sites will be abandoned (i.e., the equipment will be removed). Dr. Talwani also stated that the monitors were solar powered with battery backups. Therefore, he judged that there were no significant environmental impacts associated with the removal of the equipment and abandonment of the sites.

In accordance with its stated policy, on April 24, 1995, the staff consulted with the South Carolina State official, Mr. Virgil Autry of the Bureau of Solid and Hazardous Waste Management, Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated March 6, 1995, and May 5, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Fairfield County Library, 300 Washington Street, Winnsboro, SC.

Dated at Rockville, Maryland, this 5th day of June 1995.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14300 Filed 6–9–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424 and 50–425]

Georgia Power Company, Et Al.; (Vogtle Electric Generating Plant, Units 1 and 2)

Exemption

I

Georgia Power Company, et al. (the licensee) is the holder of Facility Operating License Nos. NPR–68 and NPF–81, which authorize operation of the Vogtle Electric Generating Plant (VEGP), Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consist of two pressurized water reactors, VEGP Units 1 and 2, at the licensee's site located near Waynesboro, Georgia.

II

Title 10 of the Code of Federal Regulations (10 CFR), § 50.60, ''Acceptance Criteria for Fracture Prevention Measures for Light-Water Nuclear Power Reactors for Normal Operation,'' states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR part 50. Appendix G to 10 CFR part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. Section 50.60 (b) specifies that alternatives to the described requirements in Appendices G and H to 10 CFR part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low temperature overpressure transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed a low temperature overpressure (LTOP) system. The system includes pressure-relieving devices called Power-Operated Relief Valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint. In addition, in order to prevent cavitation of a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee's proposed LTOP analysis includes changes to account for the non-conservatism identified in Westinghouse Nuclear Safety Advisory Letter 93005A and NRC Information Notice 93–58. The new analysis accounts for the static head due to evaluation differences and the dynamic head effect of four reactor coolant pump (RCP) operation. By including these factors and using the Appendix G safety margins, the licensee determined that the operating margin to the PORV setpoint would be depleted at approximately 120 °F for Unit 1 and 145 °F for Unit 2. Therefore, operating with these limits could result in the lifting of the PORVs and cavitation of the reactor coolant pumps during normal operation.

The licensee proposed that in determining the design setpoint for LTOP events for Vogtle Units 1 and 2, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins currently required by Appendix G, 10 CFR part 50. Designated Code Case N–514, the proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices

used for LTOP. Code Case N–514, ''Low Temperature Overpressure Protection,'' has been approved by the ASME Code Committee. The content of this Code case has been incorporated into Appendix G of Section XI of the ASME Code and Published in the 1993 Addenda to Section XI. The NRC staff is revising 10 CFR 50.55a, which will endorse the 1993 Addenda and Appendix G of Section XI into the regulations.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for the LTOP setpoint. By application dated October 3, 1994, as supplemented March 1, 1995, the licensee requested an exemption from 10 CFR 50.60 for this purpose.

In addition to requesting the exemption from 10 CFR 50.50, the licensee proposed an amendment to the Technical Specifications revising the LTOP analysis. The new analysis removes the non-conservatism as described previously.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *''

The underlying purpose of 10 CFR 50.60 Appendix G is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (1/4) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Vogtle reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients and will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements.

Using the licensee's proposed safety factors instead of Appendix G safety factors to calculate the LTOP setpoint will permit a higher LTOP setpoint than would otherwise be required and will provide added margin to prevent normal operating surges from lifting the PORVs or cavitation of the reactor coolant pumps.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), such that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), this exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the Appendix G curves for P/T limits are not exceeded by more than 10 percent in order to be in compliance with these regulations. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (60 FR 28178).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of June 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–14299 Filed 6–9–95; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

Meeting of the President's Council on Sustainable Development (PCSD) in Washington, DC; Notice

SUMMARY: The President's Council on Sustainable Development, a partnership of industry, government, and environmental, labor, Native American, and civil rights organizations, will convene its ninth meeting in Washington, DC.

The President's Council on Sustainable Development will present for the first time in a public forum its full set of draft goals and policy recommendations for establishing a long-term path toward a sustainable United States by the year 2040. The Council will also present the latest draft of the challenge statement, identifying what types of practices the United States has employed that have taken us down an unsustainable path, the most recent version of the draft vision statement, and defining principles of sustainable development.

Date/Time: Wednesday, 28 June 1995—9:00 a.m.–12:00 p.m.

Place: U.S. Chamber of Commerce, 1615 H Street, NW., Washington, DC.

Status: Open to the Public/Public comments are welcome,

Contact: 202–408–5296.

Molly Harriss Olson,

Executive Director, President's Council on Sustainable Development.

[FR Doc. 95–14311 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–10–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35804; International Series No. 815; File No. S7–8–90]

Options Price Reporting Authority; Notice of Filing of Amendment to the National Market System Plan To Update the Current Fee Structure and Eliminate the Use of Separate News Service Agreements

June 5, 1995.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 25, 1995, the Options Price Reporting Authority (''OPRA'')[2] submitted to the Commission an amendment to its National Market System Plan for the purpose of updating OPRA's fee structure and eliminating the use of separate news service agreements.[3]

The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

OPRA proposes to amend its vendor agreement and the related fee schedule to impose a new redistribution fee on all persons who redistribute options market information, to reflect a reduction in the level of the access charge currently payable by vendors and other persons who receive direct or indirect access to OPRA's Processor, and to eliminate indirect-assess or pass-through vendors and news services as persons subject to the access charge. In addition, OPRA proposes to eliminate the separate news service agreement. Instead, OPRA would categorize news services as vendors and would seek to have such services sign vendor agreements. Conforming changes would be made to the OPRA Plan.

OPRA has made this proposal in response to the growth in the listed options market and the changes in the ways in which options market information is disseminated and used. Among these changes are the increased use of electronic forms of redistribution of market information from vendors and news services directly to individual investors, often on a fifteen minute delayed basis, and the expanded number of value-added intermediaries in the chain of transmission from OPRA's processor to the end users of the information.

OPRA proposes to institute a new redistribution fee. This fee would apply to persons who receive and retransmit delayed market information. The redistribution fee would not apply to historical information.[4] OPRA's redistribution fee proposal is in response to its belief that instead of encouraging vendors to distribute current options information, the current fee structure encourages the redistribution of delayed information.

With the introduction of the new redistribution fee, OPRA proposes to eliminate the vendor and news service pass-through fee, currently charged to vendors and news services that receive options information from another vendor instead of from the OPRA Processor. In addition, in light of the added revenue expected to be realized from redistribution fees payable by vendors of delayed data, the direct access charge is proposed to be reduced from its current level to the point where the direct access charge will be less than the access charge or pass-through fee currently charged. OPRA believes that total revenue from fees charged to vendors and news services will not increase as a result of these proposed changes and, in fact, may slightly decrease during the transition period.[5] The proposed amendment to the vendor agreement also includes some nonsubstantive, editorial changes.

In addition to the fee restructuring proposal, OPRA proposes to eliminate separate news service agreements. Instead, news services would be required to enter into vendor agreements with OPRA. OPRA proposes to eliminate these separate agreements in light of technological changes that it perceives have blurred the distinction between news services and other redistributors of market data, making it no longer useful to treat news services as a separate category of vendor. According to OPRA, only two news services currently are parties to news service agreements, with most redistributors of options information to news media having already entered into vendor agreements in order to be able to redistribute options market data electronically to entities other than news media. OPRA believes that the current news service agreement and the vendor agreement are substantially the same and that the same fees apply to both news services and vendors. The elimination of the separate news service agreement, therefore, will allow news services and other vendors to be subject to the same agreement and the same fees.

II. Implementation of the Plan Amendment

In accordance with OPRA's existing agreements with vendors and news services, amendments to these agreements and to the fees charged thereunder require not less than 30 days advance notice. In order to assure that the required notice has been given to vendors and to provide time during which vendors and news services will be asked to sign new agreements reflecting the new fee structure, OPRA does not intend to implement this amendment until September 1, 1995, subject to Commission approval.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Commenters are asked to address whether they believe the proposed amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of a national market system, or otherwise is in furtherance of the purposes of the Act.

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 Plan amendment that are filed with the Commission and all written communications relating to the proposed Plan amendment 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. 522, will be available for inspection and copying in

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[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to Section 11A of the Act and Rule 11Aa3–2, thereunder. Securities Exchange Act Release No. 17638 (March 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the five member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange (''AMEX''), the Chicago Board Options Exchange (''CBOE''), the New York Stock Exchange (''NYSE''), the Pacific Stock Exchange (''PSE''), and the Philadelphia Stock Exchange (''PHLX'').

[3] The proposed amendment was approved by OPRA in accordance with the OPRA Plan at a meeting held on April 11, 1995.

[4] Under the proposal, information becomes ''historical'' upon the opening of trading in the next succeeding trading session of that same market. For example, reports of transactions completed in a trading session on Wednesday become historical reports from and after the opening of trading on the following Thursday.

[5] The transition period reflects the time in which vendors distributing delayed information are identified and brought under contract pursuant to the proposed redistribution fee.

the Commission's Public Reference Room. Copies of the filing also will be available at the offices of OPRA. All submissions should refer to File No. S7–8–90 and should be submitted by July 3, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14254 Filed 6–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release Nos. 33–7177; 34–35815; IC–21117]

Securities Transactions Settlement

June 6, 1995.

AGENCY: Securites and Exchange Commission.

ACTION: Grant of exemption.

SUMMARY: The Securities and Exchange Commission (''Commission'') is exempting transactions involving certain insurance contracts from the scope of Rule 15c6–1.

EFFECTIVE DATE: The exemption from Rule 15c6–1 for insurance contracts will be effective on June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Jerry Carpenter, Assistant Director, Christine Sibille, Senior Counsel, or Cheryl Oler, Attorney, at 202/942–4187, Office of Securities Processing Regulation, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On October 6, 1993, the Commission adopted Rule 15c6–1 [1] under the Securities Exchange Act of 1934 (''Exchange Act'') which establishes three business days after the trade date (''T+3'') instead of five business days (''T+5'') as the standard settlement time frame for most broker-dealer securities transactions.[2] Rule 15c6–1 becomes effective June 7, 1995.[3]

Rule 15c6–1 covers all securities other than exempted securities, government securities, municipal securities,[4] commercial paper, bankers' acceptances, or commercial bills. The rule contains a specific exemption for sales of unlisted limited partnership interests and alternate settlement time frames for certain firm commitment offerings of new issues.[5]

Certain insurance contracts, including variable annuity contracts and variable life insurance contracts, have been deemed to be securities under the Securities Act of 1933 (''Securities Act''),[6] and other insurance contracts, such as certain fixed dollar annuity contracts that include a market value adjustment provision, may fall within the definition of securities under the Exchange Act (collectively, these contracts are referred to hereinafter as insurance securities products). Accordingly, as adopted, the scope of Rule 15c6–1 includes purchases and sales of such securities issued by an insurance company.[7]

The American Council of Life Insurance (''ACLI'') has requested that the Commission exempt from Rule 15c6–1 purchases or redemption transactions of variable annuity contracts, variable life insurance contracts, and certain fixed dollar annuity contracts.[8] According to ACLI, the complex nature and various unique processing requirements involved in the purchase or sale of insurance securities products cannot practically be condensed into a T+3 settlement cycle.

The Commission recognizes that the mechanics of purchases and redemptions of insurance securities products are distinct from those of other securities and that, because of the time required to complete necessary preparations, such transactions typically require more protracted settlement periods. Specifically, the Commission believes that compliance with the unique requirements of state and federal law, as well as of the particular administrative procedures, applicable to insurance securities products demands additional time beyond the standard settlement process, and supports an exemption of such securities from Rule 15c6–1. For example, the Commission notes that the purchase process for a variable life insurance contract involves the assessment of insurability of the contract purchaser and the acceptance of the mortality risk before a contract can be issued for delivery.[9] Processing of an annuity contract may be protracted by substantial review to determine that any requirements imposed under the Internal Revenue Code (''IRC'') or the Employee Retirement Income Security Act (''ERISA'') are met.

In addition, such insurance securities products are subject to extensive federal and state regulation on timing of certain actions.[10] For example, once processing for a contract is complete, many states require that the insurer provide the purchaser with the right to return the contract for any reason within a specified time of delivery, generally ten days, and to receive a refund of the premium or the contract's cash value without imposition of surrender charges.[11]

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[6] 17 CFR 200.30–3(a)(29).

[1] 17 CFR 240.15c6–1 (1994).

[2] Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

[3] As adopted, Rule 15c6–1 was to become effective June 1, 1995. In order to provide for an efficient conversion the Commission changed the effective date to June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

[4] Pursuant to Municipal Securities Rulemaking Board rules, transactions in municipal securities are required to settle by T+3. Securities Exchange Act Release No. 35427 (February 28, 1995), 60 FR 12798.

[5] Securities Exchange Act Release No. 35705 (May 11, 1995), 60 FR 26604.

[6] *Securities and Exchange Commission* v. *Variable Annuity Life Insurance Co. of America, et al.*, 359 U.S. 65, 79 S.Ct. 618, 3 L.Ed.2d 640 (1959) (variable annuity contracts are ''securities'' which must be registered with the Commission under the Securities Act); Securities Act Release No. 5360, Securities Exchange Act Release No. 9972, Investment Co. Act Release No. 7644, Investment Advisors Act Release No. 359 (January 31, 1973) (a public offering of variable life insurance contracts involved an offering of securities required to be registered under the Securities Act).

[7] Within the context of this order, the definition of an insurance company is set forth in Section 2(a)(17) of the Investment Company Act of 1940 (''Investment Company Act''). 15 U.S.C. § 80a–2(a)(17). An insurance company that sells and distributes insurance securities products may be acting as a broker and a dealer as defined in Sections 3(a)(4) and 3(a)(5) of the Exchange Act. There are, however, certain circumstances in which an insurance company that issues and distributes insurance securities may not be required to register with the Commission as a broker-dealer. The Commission staff, for example, has expressed the view that if an insurance company establishes a wholly-owned subsidiary to engage in the offer and sale of insurance securities, and the subsidiary complies with all applicable rules and regulations, including the requirement to direct and supervise all persons engaged directly or indirectly in the offer and sale of securities, it would not recommend enforcement action to the Commission if the insurance company itself did not register with the Commission. Securities Exchange Act Release No. 8389 (August 29, 1968), 33 FR 13005. Consistent with those specifications, the staff of the Division of Market Regulation has further expressed circumstances in which an insurance company may not be required to register as a broker-dealer. *See, e.g., Principal Marketing Services, Inc.* (June 2, 1988); *Pacific Mutual Life Insurance Company* (April 13, 1989); *Allstate Life Insurance Company and Lincoln Benefit Life Company* (September 12, 1988); and *Time Insurance Company* (October 17, 1989).

[8] Letters from Robert S. McConnaughey, Senior Counsel, ACLI, to Brandon Becker, Director, Division of Market Regulation, Commission (April 18, 1995 and May 17, 1995).

[9] This assessment is time consuming because it may involve medical examinations, laboratory tests, and review of medical records.

[10] Insurance companies are regulated primarily by the states in which they are organized and operate. In addition, federal regulations govern some aspects of insurance contract issuance affecting the timing of such transactions. For example, Rule 22c–1(c) under the Investment Company Act requires that an insurer price a variable annuity contract within certain time frames.

[11] *E.g.*, New York Insurance Law § 4240(13) (McKinney 1985).

Likewise, the redemption or withdrawal process for insurance securities products often extends beyond the T+3 time frame. With respect to annuity contracts, the effectiveness of a withdrawal request may be delayed by the need for additional information or instructions from the contract owner with respect to the withholding of proceeds or payments to the Internal Revenue Service. In addition, while the processing of a withdrawal may take place mechanically through the insurer's systems, various circumstances may give rise to additional or preliminary manual processing which can lengthen the withdrawal process.[12] Withdrawals also may require insurers' compliance with applicable IRC provisions or ERISA requirements, as well as various administrative procedures which are relevant only to insurance securities products and not to other securities. Such compliance may demand extra processing time for withdrawals.[13]

The various administrative processes and the requirements under state and federal law which pertain to insurance securities products add complexity and time to the purchase and sale of such securities. These circumstances support the exemption of such securities from the scope of Rule 15c6–1.

Furthermore, permitting a longer settlement cycle for transactions involving insurance securities products does not appear to adversely affect the market risk concerns which the T+3 settlement cycle seeks to address. In adopting Rule 15c6–1, the Commission stated that three day settlement would reduce risk by decreasing the time between trade execution and settlement during which the value of securities could deteriorate.[14] While insurance securities products are securities, neither the insurance company nor purchaser is subject to the same settlement risks attendant to the purchase of most securities. Moreover, insurance securities products are not traded in secondary market.

Likewise, withdrawal or redemption of an insurance securities product bears less risk to insurers and contract owners. Extensive state regulations exist to ensure that insurers meet their obligations to pay withdrawal proceeds to contract owners. Accordingly, an exemption from Rule 15c6–1 for insurance securities products does not appear to be inconsistent with the purposes of Rule 15c6–1.

The Commission believes that an exemption is appropriate to provide issuers with the time needed to settle transactions involving insurance securities products. Such an exemption should not affect the current regulatory scheme governing insurance securities products, including the relevant sections and rules under the Investment Company Act and the Securities Act pertaining to the purchase and sale of securities issued by insurance companies. Accordingly, the Commission finds that such exemption is consistent with the public interest and the protection of investors.

It is hereby ordered that a contract for the purchase or sale of any security issued by an insurance company as defined in Section 2(a)(17) of the Investment Company Act of 1940[15] (''Investment Company Act'') that is funded by or participates in a ''separate account'' as defined in Section 2(a)(37) of the Investment Company Act,[16] including a ''variable annuity contract'' as defined in Rule 0–1(e)(1) under the Investment Company Act[17] or a ''variable life insurance contract'' as defined in Rule 6e–2(c)(1) or Rule 6e–3(T)(c)(1) under the Investment Company Act,[18] or any other insurance contract registered as a security under the Securities Act of 1933,[19] shall be exempt from the requirements of Rule 15c6–1.[20] This exemption is subject to modification or revocation at any time the Commission determines that such modification or revocation is consistent with the public interest or the protection of investors.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

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[12] For example, contracts between insurers and contract owners may contain special rights restriction provisions which limit the right to effect withdrawals or impose other restrictions originating from, among other things, a tax lien or divorce decree. Such contracts usually require manual processing which results in delay of the actual processing of the withdrawal.

[13] Variable annuities, for example, can be used to fund a variety of plans, including tax sheltered annuities, each of which has its own set of complex tax rules regarding withdrawals. Certain variable life insurance contracts may become subject to classification as modified endowment contracts which have taxable predeath distributions. Consequently, some insurers undertake additional examination of withdrawal transactions to determine prior to their completion if the contracts at issue could be classified as a modified endowment contract. Payment of death benefits on variable life insurance contracts and on variable annuity contracts frequently require extended processing time because insurance companies cannot make payments until they receive and review all documentation relevant to the claims and in some instances conduct an investigation of the claims.

[14] Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 [File No. S7–5–93]. The other reasons given by the Commission for the rule's adoption, coordination between the derivative and cash markets and encouragement of greater efficiency in clearing agency and broker-dealer operations, are not applicable to insurance securities products.

[15] 15 U.S.C. 80a–2(a)(17).

[16] 15 U.S.C. 80a–2(a)(37).

[17] 17 CFR 270.0–1(e)(1).

[18] 17 CFR 270.6e–2(c)(1) and 270.6e–3(T)(c)(1).

[19] 15 U.S.C. 77a–77mm.

[20] 17 CFR 240.15c6–1 (1994).

[21] 17 CFR 200.30–3(a)(55).

[Release No. 34–35805; International Series Release No. 816; File No. SR–Amex–95–04]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Currency Warrants Based on the Mexican Peso

June 5, 1995.

On February 8, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission (''Commission'') a proposed rule change to permit the listing of foreign currency warrants based on the value of the U.S. dollar in relation to the Mexican peso (''Peso Warrants''). Notice of the proposal appeared in the **Federal Register** on February 17, 1995.[3] The Exchange subsequently filed Amendment No. 1 to the proposal on March 16, 1995. Notice of Amendment No. 1 to the proposal appeared in the **Federal Register** on March 30, 1995.[4] No comment letters were received on the original proposed rule change or on Amendment No. 1. The Exchange then filed Amendment No. 2 to the proposal on May 11, 1995,[5] and Amendment No.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 35363 (February 13, 1995, 60 FR 9416.

[4] In Amendment No. 1, the Exchange amended the proposal to specify customer margin levels for the proposed currency warrants. See Securities Exchange Act Release No. 35524 (March 22, 1995), 60 FR 16517.

[5] Amendment No. 2, as discussed herein, effectively supersedes Amendment No. 1 by specifying higher minimum customer margin levels than those proposed in Amendment No. 1. *See* Letter from Howard Baker, Senior Vice President, Derivative Securities, Amex, to Sharon Lawson, Assistant Director, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated May 11, 1995 (''Amendment No. 2'').

3 on May 26, 1995.[6] This order approves the Amex proposal, as amended by Amendment Nos. 2 and 3.

Pursuant to Section 106 of the Amex Company Guide (''Guide''), the Exchange is now proposing to list and trade currency warrants based upon the value of the U.S. dollar in relation to the Mexican peso. Peso Warrants will be unsecured obligations of their issuers and will be cash-settled in U.S. dollars. Peso Warrants will be exercisable either throughout their life (*i.e.*, American-style) or only immediately prior to their expiration date (*i.e.*, European-style). Upon exercise, the holder of a Peso Warrant structured as a ''put'' will receive payment in U.S. dollars to the extent that the value of the Mexican peso in relation to the U.S. dollar has declined below a pre-stated base level. Conversely, upon exercise, holders of a Peso Warrant structured as a ''call'' will receive payment in U.S. dollars to the extent that the value of the Mexican peso in relation to the U.S. dollar has increased above a pre-stated level. Peso Warrants that are ''out-of-the-money'' at the time of expiration will expire worthless.

Any issue of Peso Warrants will conform to the listing guidelines under Section 106 of the Guide which provide that: (1) the issuer will have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in Section 101(A) of the Guide; (2) the term of the warrants will be from one to five years from the date of issuance; and (3) the minimum public distribution of such issues will be one million warrants, with a minimum of 400 public holders, and an aggregate market value of at least $4 million.[7]

The Amex will also require that Peso Warrants be sold only to customers whose accounts have been approved for options trading pursuant to Exchange Rule 921. The suitability standards of Exchange Rule 923 will apply to recommendations for opening transactions in Peso Warrants. Additionally, all discretionary orders in Peso Warrants must be approved and initialed on the day entered by a Senior Registered Options Principal or Registered Options Principal.[8]

For customer margin purposes, the Exchange will set the customer margin ''add-on''[9] percentage for Peso Warrants at 18% for both initial and maintenance margin, with a minimum add-on for out-of-the-money Peso Warrants of 15%.[10] If, as a result of the Exchange's routine monitoring of margin adequacy (*i.e.*, at least quarterly reviews), the Amex determines that a higher customer margin level would be appropriate, the Amex will take immediate steps to implement the change.[11] If, on the other hand, the Exchange determines that a lower margin percentage would be appropriate as a result of the Exchange's periodic reviews, the Exchange will file a proposal with the Commission pursuant to Section 19(b) of the Act to modify the margin add-on percentages applicable to Peso Warrants.[12] Anytime that the customer margin levels for Peso Warrants are changes, the Exchange will promptly notify the Exchange's membership and the public.

Prior to the commencement of trading of Peso Warrants, the Exchange will distribute a circular to its membership calling attention to certain compliance responsibilities when handling transactions in Peso Warrants.[13]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[14] in that it is designed to protect investors and the public interest. First, the Commission believes that the trading of listed warrants on the Mexican peso should provide investors with a hedging and risk transfer vehicle that will reflect the overall movement of the Mexican peso in relation to the U.S. dollar. In this regard, Peso Warrants should provide investors with an efficient and effective means of managing risk associated with the Mexican peso.

Second, the Exchange has proposed listing standards to provide for fair and orderly markets in Peso Warrants. Peso Warrants will conform to the listing standards in Section 106 of the Guide, which are similar to the standards pursuant to which currency warrants have previously been listed by the Amex.[15] In addition, the Exchange will limit transactions in Peso Warrants to customers with options approved accounts and impose the Amex's suitability standards and discretionary account standards to transactions in Peso Warrants.

Third, the Exchange has proposed adequate customer margin requirements. The proposed add-on margin (*i.e.*, 18%) provides sufficient coverage to account for historical and potential volatility in the Mexican Peso in relation to the U.S. dollar. In addition, the Exchange must conduct periodic reviews of the volatility in the Mexican peso and must take immediate steps to increase the existing customer margin levels if the Exchange determines that the existing levels are no longer adequate.[16] As a result, the Commission believes that the proposed customer margin levels and the review and maintenance criteria for those margin levels will result in adequate coverage of contract obligations and are designed to reduce risks arising from inadequate margin levels.

Finally, the Exchange will prepare and distribute to its membership a circular describing each issue of Peso

[6] In Amendment No. 3, discussed herein, the Exchange specified the standards the Amex will use to ensure continued adequate customer margin levels for short positions in Peso Warrants. *See* Letter from Clair McGarth Managing Director and Special Counsel, Derivative Securities, Amex, to Mike Walinskas, Branch Chief, OMS, Division, Commission, dated May 26, 1995 (''Amendment No. 3'').

[7] The Exchange has submitted for Commission approval, proposed rules governing listing requirements, and customer protection and margin requirements for stock index warrants, currency index warrants, and currency warrants. *See* Securities Exchange Act Release No. 35086 (December 12, 1994), 59 FR 65561 (December 20, 1994) (notice of File No. SR–Amex–94–38) (''Generic Warrant Listing Proposal''). If ultimately approved by the Commission, Peso Warrants issued subsequent to that approval will be subject to these rules. These rules, however, will not change the customer margin requirements specified herein. *See* Amendment no. 2, *supra* note 5.

[8] *See* Amex Rule 421, Commentary .02.

[9] For these purposes, ''add-on'' is the percentage of the current market value of the Mexican pesos underlying each Peso Warrant that the holder of a ''short'' position must pay in addition to the current market value of each Peso Warrant.

[10] *See* Amendment No. 2, *supra* note 5.

[11] Prior to increasing the customer margin levels, the Exchange should immediately contact the Commission for a determination as to whether a rule filing pursuant to Section 19(b) of the Act will be required.

[12] Specifically, the Exchange will review, on at least a quarterly basis, the frequency distributions reflecting the percentage price returns for the Mexican peso in relation to the U.S. dollar for all seven day periods during the preceding two year period. If the current margin add-on is not sufficient to cover the least 97.5% of all such seven day price returns, the Exchange will take steps to increase the margin level to one that will cover at least 97.5% of all such instances. See Amendment No. 3, *supra* note 6. In no event, however, will the Exchange reduce the margin levels provided in Amendment No. 2 without the prior approval of the Commission. See Amendment No. 2, *supra* note 5.

[13] The circular should highlight: (1) the Peso Warrants may be sold only to customers with options approved accounts; (2) the applicable suitability requirements; (3) the standards regarding discretionary orders; and (4) the applicable customer margin requirements.

[14] 15 U.S.C. 78f(b)(5) (1988).

[15] For example, the Amex currently lists currency warrants on the Japanese yen and the German mark. If the Commission approves the Exchange's Generic Warrant Listing Proposal, Peso Warrants listed subsequent to that approval will be subject to the revised listing standards. See Generic Warrant Listing Proposal, *supra* note 7. The Commission notes that to the extent the customer margin requirements contained in the Generic Warrant Listing Proposal differ from those discussed herein for Peso Warrants, the customer margin level specified above will be applied.

[16] See supra note 12.

Warrants listed by the Amex, calling attention to certain compliance responsibilities when handling transactions in Peso Warrants.[17]

Based on the foregoing, the Commission believes that the listing and trading of Peso Warrants, within the framework described above, is appropriate and consistent with the Act.

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Specifically, Amendment No. 2 realigns the customer margin requirements to reflect more accurately the recent volatility of the Mexican peso in relation to the U.S. dollar. Moreover, the Commission notes that the original proposal and Amendment No. 1 to the proposal were published in the **Federal Register** for the full 21-day comment period and that no comments were received by the Commission regarding either the original proposal or the lower customer margin levels proposed in Amendment No. 1.

Amendment No. 3 provides that the Amex will review the volatility of the Mexican peso in relation to the U.S. dollar on at least a quarterly basis and increase the applicable customer margin levels if appropriate. Moreover, the Amex cannot lower the customer margin levels from the 18% and 15% levels provided above without Commission approval pursuant to Section 19(b) of the Act. As discussed above, the Commission believes these procedures will ensure that the customer margin requirements for Peso Warrants are maintained at levels adequate to cover present and future volatility of the Mexican Peso in relation to the U.S. dollar.

Based on the above and in order to allow the Amex to begin listing Peso Warrants without delay, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 2 and 3 to the Amex's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendments Nos. 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 50 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR-Amex-95–04 and should be submitted by July 3, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [18] that the proposed rule change (File No. SR-Amex-95–04), as amended by Amendment Nos. 2 and 3, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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[17] See supra note 13.

[18] 15 U.S.C. 78S(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35798; File Nos. SR–Amex–95–17; SR–BSE–95–09; SR–CHX–95–12; SR–NASD–95–24; SR–NYSE–95–19; SR–PSE–95–14; SR–PHLX–95–34]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Boston Stock Exchange, Incorporated; Chicago Stock Exchange Incorporated; National Association of Securities Dealers, Inc.; New York Stock Exchange, Inc.; the Pacific Stock Exchange Incorporated; Philadelphia Stock Exchange, Inc., Order Approving on an Accelerated Basis Proposed Rule Changes Regarding Depository Eligibility Requirements

June 1, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] the above-referenced self-regulatory organizations (''SROs'') filed proposed rule changes [2] with the Securities and Exchange Commission (''Commission'') regarding depository eligibility requirements for issuers. Notices of the proposed rule changes were published in the **Federal Register** to solicit comments from interested persons.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule changes on an accelerated basis to be effective on June 7, 1995.

I. Description of the Proposal

Under the rule changes,[4] each SRO will adopt a depository eligibility rule [5] for issuers that desire to have their securities listed on a national securities exchange or be eligible for inclusion in the Nasdaq Stock Market (''Nasdaq'').[6] The rule changes will require issuers to represent to a national securities exchange or the NASD that the CUSIP number identifying the securities [7] to be listed on such exchange or to be eligible for inclusion in Nasdaq has been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Act.[8] This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Proposed rule changes were filed with the Commission by each SRO in conjunction with substantially similar proposals by the other SROs as follows: American Stock Exchange, Inc. (''Amex'') on May 16, 1995; Boston Stock Exchange, Incorporated (''BSE'') on May 18, 1995; Chicago Stock Exchange Incorporated (''CHX'') on April 26, 1995; National Association of Securities Dealers, Inc. (''NASD'') on May 19, 1995; New York Stock Exchange, Inc. (''NYSE'') on May 16, 1995; The Pacific Stock Exchange Incorporated (''PSE'') on May 15, 1995; and Philadelphia Stock Exchange, Inc. (''PHLX'') on May 19, 1995. On May 18, 1995, PHLX amended its proposed rule change to conform to the rule changes filed by the other SROs. Letter from Sharon S. Metzger, PHLX, to Christine Sibille, Senior Counsel, Division of Market Regulation, Commission (May 18, 1995).

[3] Securities Exchange Act Release Nos. 35734 (May 18, 1995), 60 FR 27571 (Amex); 35735 (May 18, 1995), 60 FR 27572 (BSE); 35711 (May 12, 1995), 60 FR 27357 (CHX); 35774 (May 26, 1995), 60 FR 28813 (NASD); 35773 (May 26, 1995), 60 FR 28817 (NYSE); 35740 (May 19, 1995), 60 FR 27996 (PSE); 35772 (May 26, 1995), 60 FR 28815 (PHLX).

[4] The uniform rule has been developed by the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty in coordination with each of the national securities exchanges and the NASD.

[5] Rule 777 (Amex); Chapter III, Section 8(a) (BSE); Rule 7(J) (CHX); Part II, Section 1 (c)(23) of Schedule D to the NASD by-laws (''By-laws'') and Section 11 of the Uniform Practice Code (''UPC'') (NASD); Rule 227 (NYSE); Rule 5.9(d) (PSE); and Rule 853 (PHLX).

[6] In addition to the adoption of the uniform depository eligibility rule for inclusion in the By-laws, the NASD has amended the definition of ''depository eligibility'' set forth in Section 11 of the UPC consistent with the uniform depository eligibility rule. The NASD had to amend the definition of ''depository eligibility'' because the NASD's depository settlement rule applies to all NASD members regardless of where the securities are listed. In comparison, each exchange's depository settlement rule only applies to transactions in the securities listed on that exchange.

[7] This requirement does not apply to American Depositary Receipts for securities of a foreign issuer (Amex, BSE, CHX, NYSE, PSE, and PHLX) or securities of a Canadian issuer (NASD).

[8] 15 U.S.C. 78q–1 (1988).

The rule changes set forth additional requirements that must be met before a security will be deemed to be ''depository eligible,'' within the meaning of the SROs' ''uniform book-entry settlement rules.''[9] The new rules specify different requirements for depository eligibility depending upon whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members (''flipping tracking system'').[10] Prior to the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed ''depository eligible'' for up to three months after trading has commenced in the security. After the availability of a flipping tracking system, a new issue will be deemed to be depository eligible upon commencement of trading on a national securities exchange or Nasdaq.

II. Discussion

The Commission believes that the rule changes are consistent with Sections 6(b)(5)[11] and 15A(b)(6)[12] of the Act. Sections 6(b)(5) and 15A(b)(6), among other things, require that the rules of a national securities exchange and a national securities association, respectively, be designed to remove impediments to and perfect a national market system, and in general, to protect investors and the public interest. The depository-eligibility requirement should limit market impediments arising from the physical delivery of securities and thereby should promote the perfection of a national market system. Further, the rule changes should serve to increase the efficiency of the U.S. clearance and settlement system and thereby should reduce the risks associated with that system and should serve to better protect investors and the public interest.

Furthermore, the Commission believes the rule changes should promote the purposes of Section 17A of the Act.[13] In Section 17A, Congress called for the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. In Section 17A(e),[14] Congress directed the Commission to use its authority to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities.

Book-entry settlement of interdealer securities transactions has been a goal since Congress enacted the Securities Acts Amendments of 1975.[15] Since 1975, substantial progress has been made in reducing the flow of physical certificates for settlement of interdealer and institutional securities transactions.[16] In 1993, the Commission approved the uniform book-entry settlement rules applicable to transactions in depository eligible securities between SRO members and their customers when the SRO member extends certain credit privileges (*i.e.*, delivery versus payment) as a means to facilitate the conversion from a five-day settlement cycle to a three-day settlement cycle,[17] which is set to occur June 7, 1995.[18] The present rule changes are designed to facilitate efficient and timely settlement of trades through the various market facilities and to further aid the transition to a three-day settlement cycle by increasing the number of depository-eligible securities.[19] The uniform depository-eligibility requirement should reduce costs, risks, and delays associated with the physical delivery of securities certificates and should eliminate many of the labor intensive functions associated with physical deliver of nondepository eligible securities.

The SROs have requested that the Commission find good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule changes in order that they become effective on June 7, 1995, contemporaneously with the conversion to a three-day settlement cycle.[20]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with Sections, 6, 15A, and 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule changes (File Nos. SR–Amex–95–17, SR–BSE–95–09, SR–CHX–95–12, SR–NASD–95–24, SR–NYSE–95–19, SR–PSE–95–14, and R–PHLX–95–34) be and hereby are approved for effectiveness on June 7, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

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[9] Each SRO has a uniform book-entry settlement rule which generally requires SRO members to use the facilities of a securities depository for the book-entry settlement of all transactions in depository-eligible securities with another financial intermediary (*e.g.* a broker, dealer, or bank) or institutional customer. *See, e.g.,* Amex Rules, Part IV, Section 3, Rule 776; UPC Section 11; and NYSE Rule 226.

[10] Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances, will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identity of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer[s]) and, in certain circumstances, will report to such syndicate member or selling group member the identity of such customer(s).

[11] 15 U.S.C. 78f(b)(5) (1988).

[12] 15 U.S.C. 78o–3(b)(6) (1988).

[13] 15 U.S.C. 78q—1 (1988)

[14] 15 U.S.C. 78q–1(e) (1988).

[15] Pub. L. No. 94–29, 89 Stat. 97 (1975) (codified at 15 U.S.C. 77–80H (1988)).

[16] *E.g.,* Securities Exchange Act Release Nos. 22021 (September 23, 1983), 48 FR 45167 (order granting full registration to nine clearing agencies); 19698 (April 15, 1983), 48 FR 17604 (order implementing The Depository Trust Company's (''DTC'') Fast Automated Securities Transfer program); 30283 (January 23, 1992), 57 FR 3658 (order implementing DTC's Deposit/Withdrawal at Custodian program); 30505 (March 20, 1992), 57 FR 10683 (order eliminating DTC's Certificate on Demand service for most corporate issues); 31645 (December 23, 1992), 57 FR 62407 (order approving rule change requiring that most interdealer transactions in municipal securities be settled by book-entry through a depository); and 32455 (June 11, 1993), 58 FR 33679 (order approving uniform book-entry settlement rules).

[17] Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679 (order approving uniform book-entry settlement rules).

[18] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995).

[19] While the proposed rule changes should serve to further reduce the number of transactions in depository-eligible securities for which settlement is effected by the delivery of physical certificates, the rule changes will not eliminate the ability of investors to obtain physical certificates after settlement of the transaction. As the Commission recently noted, subject to an issuer's determination whether to make physical certificates available to shareholders, the Commission believes investors should be able to obtain negotiable certificates on request. Securities Exchange Act Release No. 35038, (December 1, 1994) at note 17.

[20] *Supra* note 17 and accompanying Text.

[21] 15 U.S.C. 78s(b)(2) (1988).

[22] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35806; International Series Release No. 817; File No. SR–CBOE–95–12]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing of Currency Warrants Based on the Mexican Peso

June 5, 1995.

On January 27, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission (''Commission'') a proposed rule change to permit the listing of foreign currency warrants based on the value of the U.S. dollar in relation to the Mexican peso (''Peso Warrants''). Notice of the proposal appeared in the **Federal Register** on February 8, 1995.[3] The Exchange subsequently filed Amendment No. 1 to the proposal on March 6, 1995. Notice of Amendment No. 1 to the proposal appeared in the **Federal Register** on March 15, 1995.[4] No comment letters were received on the original proposed rule change or on Amendment No. 1. The Exchange then filed Amendment No. 2 to the proposal on May 1, 1995,[5] and Amendment No. 3 on May 24, 1995.[6] This order approves the CBOE proposal, as amended by Amendment Nos. 2 and 3.

Pursuant to CBOE Rule 31.5(E), the Exchange is now proposing to list and trade currency warrants based upon the value of the U.S. dollar in relation to the Mexican peso. Peso Warrants will be unsecured obligations of their issuers and will be cash-settled in U.S. dollars. Peso Warrants will be exercisable either throughout their life (*i.e.*, American-style) or only immediately prior to their expiration date (*i.e.*, European-style). Upon exercise, the holder of Peso Warrant structured as a ''put'' will receive payment in U.S. dollars to the extent that the value of the Mexican peso in relation to the U.S. dollar has declined below a pre-stated base level. Conversely, upon exercise, holders of a Peso Warrant structured as a ''call'' will receive payment in U.S. dollars to the extent that the value of the Mexican peso in relation to the U.S. dollar has increased above a pre-stated level. Peso Warrants that are ''out-of-the-money'' at the time of expiration will expire worthless.

Any issue of Peso Warrants will conform to the listing guidelines under CBOE Rule 31.5(E) which provide that: (1) The issuer will have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in CBOE Rule 31.5(A); (2) the term of the warrants will be from one to five years from the date of issuance; and (3) the minimum public distribution of such issues will be one million warrants, with a minimum of 400 public holders, and an aggregate market value of at least $4 million.[7]

The CBOE will also require that Peso Warrants be sold only to customers whose accounts have been approved for options trading pursuant to Exchange Rule 9.7. The suitability standards of Exchange Rule 9.9 will apply to recommendations for opening transactions in Peso Warrants. Additionally, the standards of Rule 9.10(a), regarding discretionary orders, will also be applied to Peso Warrants. Moreover, the Exchange will require members and member organizations to report to the CBOE any positions of 100,000 or more Peso Warrants on the same side of the market.[8]

For customer margin purposes, the Exchange will set the customer margin ''add-on'' [9] percentage for Peso Warrants at 18% for both initial and maintenance margin, with a minimum add-on for out-of-the-money Peso Warrants of 15%.[10] If, as a result of the Exchange's routine monitoring of margin adequacy (*i.e.*, at least quarterly reviews), the CBOE determines that a higher customer margin level would be appropriate, the CBOE will take immediate steps to implement the change.[11] If, on the other hand, the Exchange determines that a lower margin percentage would be appropriate as a result of the Exchange's periodic reviews, the Exchange will file a proposal with the Commission pursuant to Section 19(b) of the Act to modify the margin add-on percentages applicable to Peso Warrants.[12] Anytime that the customer margin levels for Peso Warrants are changed, the Exchange will promptly notify the Exchange's membership and the public.

Prior to the commencement of trading of Peso Warrants, the Exchange will distribute a circular to its membership calling attention to certain compliance responsibilities when handling transactions in Peso Warrants.[13]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) [14] in that

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35324 (February 2, 1995), 60 FR 7599.

[4] In Amendment No. 1, the Exchange amended the proposal to specify customer margin levels for the proposed currency warrants. *See* Securities Exchange Act Release No. 35463 (March 9, 1995), 60 FR 14042.

[5] Amendment No. 2, as discussed herein, effectively supersedes Amendment No. 1 by specifying higher minimum customer margin levels than those proposed in Amendment No. 1. *See* Letter from Mary Bender, Senior Vice President, Division of Regulatory Services, CBOE, to Sharon Lawson, Assistant Director, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated April 27, 1995 (''Amendment No. 2'').

[6] In Amendment No. 3, as discussed herein, the Exchange: (1) Specified the standards the CBOE will use to ensure continued adequate customer margin levels for short positions in Peso Warrants; and (2) imposed reporting requirements for certain positions in Peso Warrants. *See* Letter from Mary Bender, Senior Vice President, Division of Regulatory Services, CBOE, to Brad Ritter, Senior Counsel, OMS, Division, Commission, dated May 24, 1995 (''Amendment No. 3'').

[7] On September 28, 1994, the Exchange submitted for Commission approval, proposed rules governing listing requirements, and customer protection and margin requirements for stock index warrants, currency index warrants, and currency warrants. *See* Securities Exchange Act Release No. 35178 (December 29, 1994), 60 FR 2409 (January 9, 1995) (notice of File No. SR–CBOE–94–34) (''Generic Warrant Listing Proposal''). If ultimately approved by the Commission, Peso Warrants issued subsequent to that approval will be subject to these rules. These rules, however, will not change the customer margin requirements specified herein. *See* Amendment No. 2, *supra* note 5.

[8] *See* Amendment No. 3, *supra* note 6. In connection with the Generic Warrant Listing Proposal, the CBOE intends to impose similar reporting requirements for all currency warrants listed by the Exchange. *See* Generic Warrant Listing Proposal, *supra* note 7.

[9] For these purposes, ''add-on'' is the percentage of the current market value of the Mexican pesos underlying each Peso Warrant that the holder of a ''short'' position must pay in addition to the current market value of each Peso Warrant.

[10] *See* Amendment No. 2, *supra* note 5.

[11] Prior to increasing the customer margin levels, the Exchange should immediately contact the Commission for a determination as to whether a rule filing pursuant to Section 19(b) of the Act will be required.

[12] Specifically, the Exchange will review, on at least a quarterly basis, the frequently distributions reflecting the percentage price returns for the Mexican peso in relation to the U.S. dollar for all seven day periods during the preceding two year period. If the current margin add-on is not sufficient to cover at least 97.5% of all such seven day price returns, the Exchange will take steps to increase the margin level to one that will cover at least 97.5% of all such instances. *See* Amendment No. 3, *supra* note 6. In no event, however, will the Exchange reduce the margin levels provided in Amendment No. 2 without the prior approval of the Commission. *See* Amendment No. 2, *supra* note 5.

[13] The circular should highlight: (1) That Peso Warrants may be sold only to customers with options approved accounts; (2) the applicable suitability requirements; (3) the standards regarding discretionary orders; (4) the reporting requirements for positions of 100,000 or more Peso Warrants on the same side of the market; and (5) the applicable customer margin requirements.

[14] 15 U.S.C. 78f(b)(5) (1988).

it is designed to protect investors and the public interest. First, the Commission believes that the trading of listed warrants on the Mexican peso should provide investors with a hedging and risk transfer vehicle that will reflect the overall movement of the Mexican peso in relation to the U.S. dollar. In this regard, Peso Warrants should provide investors with an efficient and effective means of managing risk associated with the Mexican peso.

Second, the Exchange has proposed listing standards to provide for fair and orderly markets in Peso Warrants. Peso Warrants will conform to the listing standards in CBOE Rule 31.5(E), which are similar to the standards pursuant to which currency warrants have been listed by other securities exchanges.[15] In addition, the Exchange will limit transactions in Peso Warrants to customers with options approved accounts and impose the CBOE's suitability standards and discretionary account standards to transactions in Peso Warrants. Moreover, the requirements established by the Exchange for reporting positions in Peso Warrants on the same side of the market will assist the CBOE in detecting and deterring attempts at manipulation.

Third, the Exchange has proposed adequate customer margin requirements. The proposed add-on margin (*i.e.*, 18%) provides sufficient coverage to account for historical and potential volatility in the Mexican peso in relation to the U.S. dollar. In addition, the Exchange must conduct periodic reviews of the volatility in the Mexican peso and must take immediate steps to increase the existing customer margin levels if the Exchange determines that the existing levels are no longer adequate.[16] As a result, the Commission believes that the proposed customer margin levels and the review and maintenance criteria for those margin levels will result in adequate coverage of contract obligations and are designed to reduce risks arising from inadequate margin levels.

Finally, the Exchange will prepare and distribute to its membership a circular describing each issue of Peso Warrants listed by the CBOE, calling attention to certain compliance responsibilities when handling transactions in Peso Warrants.[17]

Based on the foregoing, the Commission believes that the listing and trading of Peso Warrants, within the framework described above, is appropriate and consistent with the Act.

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 realigns the customer margin requirements to reflect more accurately the recent volatility of the Mexican peso in relation to the U.S. dollar. Moreover, the Commission notes that the original proposal and Amendment No. 1 to the proposal were published in the **Federal Register** for the full 21-day comment period and that no comments were received by the Commission regarding either the original proposal or the lower customer margin levels proposed in Amendment No. 1.

Amendment No. 3 also provides that the CBOE will review the volatility of the Mexican peso in relation to the U.S. dollar on at least a quarterly basis and increase the applicable customer margin levels if appropriate. Moreover, as provided in Amendment No. 2, the CBOE cannot lower the customer margin levels from the 18% and 15% levels provided above without Commission approval pursuant to Section 19(b) of the Act. As discussed above, the Commission believes these procedures will ensure that the customer margin requirements for Peso Warrants are maintained at levels adequate to cover present and future volatility of the Mexican peso in relation to the U.S. dollar.

Amendment No. 3 also imposes reporting requirements for certain large positions (*i.e.*, over 100,000 contracts on the same side of the market) in Peso Warrants. Because there currently are no position limits for positions in Peso Warrants, the Commission believes this is a reasonable approach by the CBOE for acquiring information that may be helpful in the Exchange's efforts to detect and deter attempted manipulation.

Based on the above and in order to allow the CBOE to begin listing Peso Warrants without delay, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 2 and 3 to the CBOE's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–95–12 and should be submitted by July 3, 1995.

It Is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR–CBOE–95–12), as amended by Amendment Nos. 2 and 3, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14256 Filed 6–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35809; File No. SR–NSCC–95–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Seeking To Establish the Collateral Management Service

June 5, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 22, 1995, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–95–06) as described in Items I, II, and III below, which items have been

[15] For example, the American Stock Exchange (''Amex'') currently lists currency warrants on the Japanese yen and the German mark pursuant to Section 106 of the Amex Company Guide. If the Commission approves the Exchange's Generic Warrant Listing Proposal, Peso Warrants listed subsequent to that approval will be subject to the revised listing standards. *See* Generic Warrant Listing Proposal, *supra* note 7. The Commission notes that to the extent the customer margin requirements contained in the Generic Warrant Listing Proposal differ from those discussed herein for Peso Warrants, the customer margin levels specified above will be applied.

[16] *See supra* note 12.

[17] *See supra* note 13.

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

prepared primarily by NSCC. On June 2, 1995, NSCC filed an amendment to the proposed rule change to clarify which entities may be permitted to participate in the proposed service.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to establish the Collateral Management Service (''CMS'') which will provide access to information regarding participants' clearing fund, margin, and other similar requirements and deposits at NSCC and other participating clearing entities. As proposed, participating clearing entities will include clearing agencies registered pursuant to Section 17A of the Securities Exchange Act[3] and clearing organizations affiliated with or designated by contract markets trading specific futures products under the oversight of the Commodity Futures Trading Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish the CMS. The CMS will provide access to information regarding participants' clearing fund, margin, and other similar requirements and deposits at NSCC and other Participating Clearing Entities including excess or deficit amounts and comprehensive data on underlying collateral (''CMS data''). NSCC may provide the CMS data to participants of NSCC, to participating clearing entities, and, if a participating clearing entity requests, to participants of such participating clearing entity. Each participant that desires access to the CMS data will be required to complete a CMS participation application. A participant's access to CMS data will be limited to the participant's own information. Similarly, a participating clearing entity's access to CMS data will be limited to only the CMS data of participants of such entity. A participant may request that NSCC exclude data relating to such participant from the CMS by completing a request to exclude data form.

Participating clearing entities will be required to sign and execute NSCC's CMS agrement. The CMS agreement sets forth NSCC's authorization from participating clearing entities to collect and provide information relating to participants' clearing fund and margin requirements and participants' clearing fund and margin deposits as contained in the Securities Clearing Group's (''SCG'')[5] data base and the Chicago Board of Trade Clearing Corporation's Pay Collect System (''BTCC System'').[6] The CMS agreement also authorizes NSCC to disseminate additional information provided by the participating clearing entities. The CMS agreement also addresses such matters as the confidentiality of CMS Data, additional parties, costs, and limitation of liability. At the time of this filing, The Depository Trust Company and The Options Clearing Corporation have agreed in principle to participate in CMS.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will facilitate cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 NSCC 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. Person making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR–NSCC–95–06 and should be submitted by July 3, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

[2] Letter from Anthony H. Davidson, Associate Counsel, NSCC, to Peter Geraghty, Division of Market Regulation, Commission (May 26, 1995).

[3] 15 U.S.C. 78q–1 (1988).

[4] The Commission has modified the text of the summaries submitted by NSCC.

[5] The SCG was established in 1989 as a result of developments surrounding the October 1987 Market Break and subsequent studies on the causes of the Market Break. The stated purpose of the SCG is to increase cooperation and coordination among securities clearing entities and to facilitate the sharing of certain clearance and settlement information regarding surveillance and member risk monitoring. For a further description of the SCG, refer to Securities Exchange Act Release No. 27044 (July 25, 1989), 54 FR 30963 [File Nos. SR–DTC–88–20, SR–MCC–88–10, SR–MSTC–88–07, SR–NSCC–88–09, SR–OCC–89–02, SR–Philadep–89–01, and SR–SCCP–89–01] (order approving the establishment of the SCG).

[6] The Chicago Board of Trade, through the Board of Trade Clearing Corporation, established the Shared Pay/Collect System which disseminates the daily pay/collects of all futures clearing firms which are affiliated with a participating futures exchanges.

[7] 17 CFR 200.30–3(a)(12) (1994).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 95–14324 Filed 6–9–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–35808; File No. SR–SCCP–95–1]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to One-Day Settlement

June 5, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 5, 1995, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–SCCP–95–1) as described in Items I and II below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments from interested persons and grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP is filing the proposed rule change to offer its participants the ability to effect one-day settlements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed filing, SCCP proposes to offer one-day settlement capability to its participants through an interface with the one-day settlement system offered by the National Securities Clearing Corporation (''NSCC'').[3] In the current T+5 settlement environment, trades compared or recorded after T+3 typically settle two days thereafter and therefore are not included in the normal settlement cycle on T+5. For example, trades received on T+4 presently settle on T+6. As the industry converts to a T+3 settlement environment, trades may miss the settlement date if the registered clearing corporations cannot effect one-day settlements. Without a one-day settling capability, trades compared and recorded on T+2 will not settle until T+4.

SCCP proposes to interface with NSCC to offer one-day settlement for trades submitted prior to SCCP's cut-off time on T+4 in a T+5 settlement environment and submitted prior to SCCP's cut-off time on T+2 in a T+3 settlement environment, including over-the-counter trades, fixed income transaction system trades, and other regional interface operator trades. SCCP will receive and accept input from participants up to approximately 7:00 p.m. in order to interface with the established NSCC cut-off time of 9 p.m. Those trades received before the 7 p.m. daily cut-off time on T+2 and thereafter (*i.e.,* trades received before the daily cut-off time on T+3, T+4, etc.) will settle on the next business day. Trades received subsequent to the daily cut-off time on T+2 and thereafter will continue to settle two business days later.

SCCP believes the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. SCCP will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[4] requires the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that SCCP's one-day settling capability should help promote prompt and accurate clearing and settlement because it will increase the number of trades that are included in the normal settlement cycle. Thus, the number of failed trades and the time required for settlement should be reduced.

As of June 7, 1995, Rule 15c6–1 will require securities transactions to be completed within a three-day settlement cycle.[5] The Commission believes that settlement of trades in a shorter time frame will reduce risk to the securities market, including risk to clearing corporations as a result of member failure. Without one-day settling capability, it is possible that many trades may fail to settle within the new three-day cycle. Thus, the proposal advances the risk reduction goals of Rule 15c6–1.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing because such approval will permit SCCP to implement the interface with NSCC and to provide one-day settling capability prior to the conversion to a three-day settlement cycle.

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, N.W., Washington, D.C. 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

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the language in these sections.

[3] For a complete description of NSCC's one-day settlement system, refer to Securities Exchange Act Release No. 35442 (March 3, 1995), 60 FR 13196.

[4] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[5] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995).

Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to the file number SR–SCCP–95–01 and should be submitted by July 3, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–SCCP–95–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14322 Filed 6–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–21115; 812–9286]

AMBAC Capital Management, Inc.; Notice of Application

June 6, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''1940 ACT'').

APPLICANT: AMBAC Capital Management, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for an exemption from the provisions of paragraphs (a)(1), (b)(2)(i) and (b)(3)(i) of rule 3a–5 under the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks relief from certain provisions of rule 3a–5 to enable it and other future wholly-owned finance subsidiaries of AMBAC, Inc. (''AMBAC'') to rely on the exemption from all provisions of the 1940 Act afforded by the rule while engaging in certain lending and investing activities not included within the express terms of the rule.

FILING DATES: The application was filed on October 17, 1994, and amended and restated on June 2, 1995.

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 Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 30, 1995, and should be accompanied by proof of service on Applicant, 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, N.W., Washington, D.C. 20549; Applicant, 10 Glenville Street, Greenwich, Connecticut 06831.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Delaware corporation and wholly-owned subsidiary of AMBAC Capital Corporation, a Delaware corporation,which in turn is a wholly-owned subsidiary of AMBAC. AMBAC is a holding company primarily engaged through another wholly-owned subsidiary, AMBAC Indemnity Corporation (''AMBAC Indemnity''), in the financial guarantee insurance business. AMBAC's shares are publicly traded on the New York Stock Exchange.

2. AMBAC Indemnity is a licensed insurance company in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico and Guam that primarily insures newly issued municipal bonds. AMBAC Indemnity has been assigned triple-A claims-paying ability ratings, the highest ratings of Moody's Investors Service, Inc. (''Moody's''), Standard & Poor's Corporation (''S&P'') and Fitch Investors Service, Inc. AMBAC depends primarily on dividends from AMBAC Indemnity to pay dividends on its capital stock, to pay principal and interest on its indebtedness, and to pay its operating expenses.

3. Applicant was organized to issue and sell municipal investment contracts and similar investment agreements (together, the ''MICs''). Applicant presently sells the MICs on a private placement basis primarily to state or local government entities or agencies and trustees for bond issues of such entities or agencies (collectively, the ''MIC Holders''), for the investment of proceeds from municipal bond offerings.

4. The MICs are debt securities with an agreed-upon rate of return that may be collateralized by U.S. Treasury or other high quality securities. Municipal bond issuers find MICs attractive because their bonds are often issued to finance projects for which they have no immediate need for the entire proceeds of the issue. A MIC Holder may also purchase a MIC from the Applicant as a means of investing debt service reserve an similar funds held by the MIC Holder. The MICs provide the municipal bond issuer with a guaranteed yield that is advantageous relative to the interest rate on the bonds and can be structured to provide draw-downs as needed.

5. Because of restrictions on their permitted investments, some municipalities have requested that Applicant enter into MICs styled as repurchase agreements (each, a ''Repo''), which would provide such municipalities with the economic equivalent of entering into a collateralized MIC. Applicant considers entering into such Repos to be equivalent to issuing a MIC in the form of a collateralized investment contract and will treat the proceeds generated thereby the same as any other proceeds raised in a debt issuance (hereinafter, any reference to ''MIC'' shall include such Repos).

6. The proceeds of MIC sales will be on-lent by Applicant to AMBAC and/or its direct and indirect subsidiaries (the ''Recipients'') for use in financing their respective operations. It is anticipated that substantially all of the proceeds from the MICs will be loaned by Applicant to the Recipients contemporaneously with the issuance of the related MIC, but in no event will less than 85 percent of such proceeds be loaned later than six months after Applicant's receipt of such proceeds. It is also anticipated that substantially all loans to Recipients will be collateralized by the Recipients themselves.

7. Pursuant to an Insurance and Indemnity Agreement with AMBAC Indemnity (the ''Agreement''), Applicant's obligations under each MIC issued by it are fully insured by AMBAC Indemnity. The insurance policy (each, an ''Indemnity Policy'') provides that in the event of default by Applicant on the payment of principal or interest on the MIC, AMBAC Indemnity will make the scheduled payment. In addition, the MIC Holder may institute legal proceedings directly against AMBAC Indemnity to enforce such payment without first proceeding against Applicant. The Agreement requires

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[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1994).

Applicant to reimburse AMBAC Indemnity for any payments made by AMBAC Indemnity under the Indemnity Policies.

8. In order to secure its performance under the Agreement, Applicant generally will rehypothecate all collateral received in respect of loans of proceeds to Recipients to The Bank of New York as trustee (together with any successor trustee, the ''Trustee'') for the benefit of AMBAC Indemnity under a Master Trust Agreement. With respect to MICs in the form of collateralized investment contracts or Repos, however, the collateral pledged to secure the related loan of proceeds will be rehypothecated to the MIC Holder rather than to the Trustee.

9. Applicant may come within the definition of an investment company under section 3(a) of the 1940 Act to the extent that its loans to AMBAC and the other Recipients may be considered as investing or reinvesting in debt securities of AMBAC and the other Recipients. Applicant presently is relying on the exception from the 1940 Act provided by section 3(c)(1). It will be unable to continue to do so, however, at such time as the 100 owner limit contained therein is exceeded or if Applicant were to make a public offering of its securities.

Applicant's Legal Analysis

1. Generally, rule 3a–5 grants an exemption from all provisions of the 1940 Act, subject to certain conditions, to any finance subsidiary (as defined in the rule) of an eligible parent company so as to permit the finance subsidiary to offer debt securities or non-voting preferred stock in the United States. Rule 3a–5 also permits a finance subsidiary to loan the proceeds of its securities offerings to eligible companies controlled by the parent company.

2. Applicant's proposed activities will not meet the requirement of paragraph (a)(1) of rule 3a–5 that any debt securities of the finance company issued to or held by the public be unconditionally guaranteed by the parent company. In Applicant's case, all MICs will receive a guarantee in the form of an unconditional insurance policy to be issued by AMBAC Indemnity, unless the parent company guarantee required by rule 3a–5 is delivered instead.

3. Applicant submits that its planned operations raise two further issues under rule 3a–5. First, paragraph (b)(2)(i) of rule 3a–5 defines an eligible parent company as a company that, among other things, is not an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a). Applicant states that there may be some uncertainty over AMBAC's status under section 3(a)(3) of the 1940 Act. Consequently, to the extent that AMBAC must rely on a section 3(c)(6) exception as an insurance holding company, AMBAC would not qualify as an eligible parent under rule 3a–5. Second, paragraph (b)(3)(i) of rule 3a–5 defines a ''company controlled by the parent company'' as a company that, among other things, is not an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a). AMBAC engages in certain activities (including certain investment activities) through wholly-owned subsidiaries that have no outstanding securities other than those owned directly or indirectly by AMBAC. Such subsidiaries would be eligible for exemption under rule 3a–3 under the 1940 Act, except that a section 3(c)(6) exempt entity is not an eligible parent of a rule 3a–3 exempt company. In addition, the Applicant might choose in the future to lend the proceeds of its MIC offerings to AMBAC Indemnity, which is a section 3(c)(3) exempt insurance company. Accordingly, Applicant requests exemptive relief from rule 3a–5(b)(3)(i) to permit it to lend the proceeds of its debt offerings to subsidiaries of AMBAC that would be exempt by virtue of rule 3a–3, but for AMBAC's status as their parent company, and to AMBAC Indemnity.

4. Section 6(c) of the 1940 Act provides, as here relevant, that the SEC, by order upon application, may conditionally or unconditionally exempt any person or persons from any provision of the 1940 Act or any rule thereunder, if such exemption is necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act. Applicant submits that the exemptive relief requested meets those standards.

5. Applicant submits that the Indemnity Policy issued by AMBAC Indemnity covering the MICs serves the underlying objectives of the rule 3a–5 guarantee since the MIC Holders will be provided with benefits substantially similar to those provided by the guarantee requirement of rule 3a–5. There will at all times be an uninterrupted payment of funds to the MIC Holders. MIC Holders will also benefit from safeguards that are not present in the guarantee of a non-regulated parent company, since AMBAC Indemnity is subject to a comprehensive scheme of regulation and supervision under the insurance laws of Wisconsin, its state of incorporation, as well as the insurance laws and regulations of other jurisdictions in which it does business.

6. Applicant further asserts that the receipt of an insurance policy from AMBAC Indemnity in lieu of an AMBAC guarantee increases the likelihood that the MIC Holders will be paid in full. This is because AMBAC's equity interest in AMBAC Indemnity is in excess of 99% of its assets, so that AMBAC's only significant source of funds with which to make payments is dividends on its AMBAC Indemnity stock. Furthermore, AMBAC Indemnity's triple-A rated claims paying ability has been assigned higher ratings than AMBAC's double-A rated senior debt by Moody's and S&P, reflecting an assessment by such rating agencies of the increased likelihood of payment in the case of AMBAC Indemnity. Based on the foregoing, Applicant requests exemptive relief from rule 3a–5(a)(1) to permit AMBAC Indemnity to issue insurance policies in lieu of the parent guarantees otherwise required.

7. Applicant's parent AMBAC may be considered a section 3(c)(6) exempt company, as noted above, because it is primarily engaged in a section 3(c)(3) business (insurance) through AMBAC Indemnity. Applicant contends that the types of businesses enumerated in section 3(c)(3) do not present the potential for investment company type activities with which the SEC was concerned when it limited the definition of parent company (such as AMBAC) and controlled company (such as AMBAC Indemnity) under rule 3a–5. Similarly, where AMBAC engages in certain activities through wholly-owned subsidiaries that would qualify for exemption under rule 3a–3, except for the fact that a section 3(c)(6) entity is not an eligible parent of a rule 3a–3 company, Applicant contends that there is no reason to impose the requirements of the 1940 Act on such subsidiaries. Accordingly, Applicant believes it is appropriate to grant relief from paragraphs (b)(2)(i) and (b)(3)(i) of rule 3a–5 to enable Applicant to lend the proceeds of its offerings to its parent company, AMBAC, and to the other Recipients.

8. Applicant believes that neither its structure nor its mode of operations resembles that of an investment company. Applicant asserts, therefore, that it is not the type of company

Congress intended to regulate under the 1940 Act, and that under the circumstances, AMBAC's status as a section 3(c)(6) excepted company should not prevent the SEC's grant of requested relief.

9. Applicant and any other future wholly-owned subsidiary of AMBAC relying on any order granting the application will comply with the provisions of rule 3a–5 except to the limited extent for which relief is sought in the application. AMBAC believes that any such future subsidiaries would be formed in response to business or market concerns, such as business differentiation between products or to more specifically manage the risks of different MIC categories.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14326 Filed 6–9–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–5951]

Inssuer Delisting; Notice of Application To Withdraw From Listing and Registration; (CMI Corporation, Voting Class A Common Stock, $0.10 Par Value)

June 6, 1995.

CMI Corporation (''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 (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. (''NYSE''). The Security commenced trading on the NYSE at the opening of business on May 24, 1995, and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of the Security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before June 27, 1995 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 Amex 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. 95–14320 Filed 6–9–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Rel. No. 21116; 812–9428]

Equitex, Inc.; Notice of Application

June 6, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Equitex, Inc.

RELEVANT ACT SECTION: Section 61(a)(3)(B).

SUMMARY OF APPLICATION: Applicant seeks an order authorizing applicant to issue stock options pursuant to applicant's Amended 1993 Stock Option Plan for Non-Employee Directors (the ''Directors' Plan'').

FILING DATES: The application was filed on December 14, 1994 and amended on April 24, 1995.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1995, and should be accompanied by proof of service on applicant, 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 the date of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 7315 East Peakview Avenue, Englewood, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

APPLICANT'S REPRESENTATIONS

1. Applicant is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] Applicant seeks an order pursuant to section 61(a)(3)(B) of the Act authorizing it to: (a) Grant options to purchase 100,000 shares of applicant's common stock to each current non-employee director of applicant on the date the Commission issues the order requested hereby (the ''Order Date''); and (b) grant options to purchase 100,000 shares of applicant's common stock to each new non-employee director of applicant who may be elected or appointed to applicant's Board of Directors (the ''Board'') subsequent to the Order Date.

2. The Directors' Plan provides for non-discretionary grants of stock options to non-employee directors of applicant to acquire, in the aggregate, up to 500,000 shares of applicant's common stock. The Directors' Plan was adopted by the Board on April 1, 1993 (the ''Effective Date'') and approved by applicant's shareholders on December 28, 1993 for a ten year term commencing on the Effective Date. On April 20, 1995, the Board cancelled all options conditionally granted under the Director's Plan, none of which were exercisable or had been exercised, and adopted amendments to the Directors' Plan (the ''Directors' Plan Amendments''). The Directors' Plan Amendments revised the Directors' Plan to provide that options shall automatically be granted not on the

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities. Such issuers are small, nascent companies whose securities typically are illiquid. Certain of the regulatory restrictions of the Act are relaxed for BDCs.

Effective Date but rather on the Order Date.[2]

3. Applicant's primary investment objective is to achieve long-term capital appreciation through investing in new and developing companies and in companies which are experiencing financial difficulties. Applicant does not have an external ''investment adviser'' within the meaning of the Act. Applicant's investment decisions are made by its officers and directors. Applicant typically provides a substantial commitment of capital to its investee companies and makes available to them significant managerial assistance.

4. Each non-employee director of applicant receives $1,500 for each Board meeting attended and reimbursement for expenses incurred in attending Board meetings. The non-employee directors do not receive any additional compensation for serving on applicant's audit or compensation committees. The non-employee directors do not receive compensation from applicant for providing managerial assistance to investees of applicant. Non-employee directors, may, however, receive nominal compensation from investee companies for serving on their boards of directors.

5. Each non-employee director of applicant, on the Order Date, will receive options to acquire 100,000 shares of applicant's common stock. Each person who becomes a non-employee director of applicant after the Order Date automatically will receive options to acquire 100,000 shares of applicant's common stock ninety days after the non-employee becomes a director. Currently, there are two non-employee directors who will be eligible to receive options under the Directors' Plan on the Order Date.

6. As of April 20, 1995, the aggregate amount of applicant's voting securities that would result from the exercise of all options issues or issuable under the Directors' Plan and applicant's existing employee stock option plan would be 1,289,786 shares, or approximately 19.99% of the 6,448,930 shares of applicant's common stock outstanding. Applicant has no warrants, options, or rights outstanding other than those granted to its directors, officers, and employees as part of its employee stock option plan.

7. Options granted under the Directors' Plan will expire within ten years from the date of grant. Fifty percent of the options granted will vest and become exercisable six months following the date of grant, with the remaining fifty percent of the options exercisable ratably on a monthly basis over the following eighteen months. The exercise price of options granted under the Directors' Plan will be the current market value of applicant's common stock on the date the option is granted.

8. If a non-employee director ceases to be a director or is removed as a director of applicant for cause, all options granted to that director will terminate on the date of his removal as a director. If a non-employee director dies while in office, all options granted to such director may be exercised by such person's estate at any time within one year after the director's death, but not later than the expiration of the original term of the option. If a non-employee director ceases to be a director of applicant for any reason other than cause or death, all options granted to such director will terminate three months after the date the director ceases to be a director.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act.

2. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) the options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of issuance; (c) the proposal to issue such options is approved by the company's shareholders, and is authorized by order of the Commission upon application; (d) the options are not transferable except for the dispositions by gift, will or intestacy; (e) no investment adviser of the company receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the company does not have a profit-sharing plan as described in section 57(n) of the Act.

3. In addition, section 61(a)(3)(B) provides that the amount of the company's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the company's outstanding voting securities except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to such company's directors, officers, and employees pursuant to an executive compensation plan would exceed fifteen percent of the company's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed twenty percent of the outstanding voting securities of such company.

4. Applicant asserts that the Directors' Plan and the stock options to be granted automatically to applicant's non-employee directors, and the stock options to be granted automatically to each new non-employee director of applicant who joins applicant's Board subsequent to the Order Date, pursuant to such plan would meet all applicable requirements of the Act: (a) The options will expire by their terms within ten years; (b) the exercise price of the options will not be less than the current market value of the underlying securities at the date of the issuance of the options; (c) the proposal to issue the options has been authorized by applicant's shareholders; (d) the options will not be transferable except for disposition by gift, will, or intestacy; (e) applicant does not have an investment adviser; and (f) applicant does not have a profit-sharing plan described in section 57(n). In addition, the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of applicant.

5. Applicant asserts that in order to attract and retain qualified personnel, it must provide non-employee directors with incentives in the form of an executive compensation program. Applicant believes that the skill and experience of its management and directors are critical to its success. Applicant asserts that it directors are actively involved in the oversight of applicant's affairs, and that it relies extensively on the judgment and experience of the directors. In addition, applicant represents that one or more of its officers and directors often are elected to the boards of directors of its portfolio companies.

6. Applicant submits that the terms of the Directors' Plan and the stock options

[2] Section 61(a)(3)(B) requires that the proposal to issue stock options to non-employee directors of a BDC, pursuant to an executive compensation plan, be authorized by SEC order before any such options are issued. Since the options initially were issued without the required SEC order, applicant cancelled the outstanding options and proposes to reissue them, in accordance with section 61(a)(3)(B), upon receiving the order requested hereby.

to be granted automatically to applicant's non-employee directors are fair and reasonable and do not involve any overreaching of applicant or its shareholders. The total number of shares for which options would be granted under the Directors' Plan would depend on whether there are changes in applicant's Board. If the two non-employee directors currently serving on applicant's Board exercised all of the options proposed to be granted to them, 200,000 shares, or approximately, 3.1% of applicant's outstanding common stock, will be issued under the Directors' Plan. If all options available for grant under the Directors' Plan are granted and exercised, 500,000 shares, or approximately 7.8% of applicant's common stock will be issued. Given these relatively small amounts of stock, applicant submits that the exercise of the options will not have a substantial dilutive effect on the net asset value of the common stock of applicant.

7. Applicant asserts that because 50% of the stock options granted to a non-employee director would vest six months following the date of grant, and the remaining 50% would vest ratably on a monthly basis over the next eighteen months, the plan would provide non-employee directors with incentives to remain with applicant. In addition, applicant contends that because the options granted pursuant to the plan have no value unless the price of applicant's common stock exceeds their exercise price, the options provide significant incentives for non-employee directors to devote their best efforts to the success of applicant's business. The options also provide a means for applicant's thereby helping to ensure a closer identification of their interests with those of applicant and its shareholders. Applicant contends that incentives in the form of stock options enable it to maintain continuity in its board membership and to attract and retain as directors the highly experienced, successful, and dedicated business and professional people that are critical to its success as a BDC and to the success of its investee companies.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–14327 Filed 6–9–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–10567]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (International Murex Technologies Corporation, Common Stock, No Par Value)

June 6, 1995.

International Murex Technologies Corporation (''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 (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, its Board of Directors (''Board'') approved resolutions on May 4, 1995 to withdraw the Company's Security from listing on the Amex and, instead, list such Security on the National Association of Securities Dealers Automated Quotations National Market System (''Nasdaq/NMS''). The decision of the Board followed a lengthy study of the matter and was based upon the belief that listing the Security on the Nasdaq/NMS will be more beneficial to the Company's shareholders than the present listing on the Amex because the Company believes:

(1) the Nasdaq/NMS system of competing market makers will result in increased visibility and sponsorship for the Security than is presently the case with the single specialist on the Amex;

(2) the Nasdaq/NMS system will offer the Company's shareholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) the Nasdaq/NMS system will offer the opportunity for the Company to secure its own group of market makers and expand the capital base available for trading in the common stock; and

(4) the firms making a market in the Security on the Nasdaq/NMS system will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before June 27, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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. 95–14321 Filed 6–9–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–2207]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Triarc Companies, Inc. Class A Common Stock, $.10 Par Value)

June 6, 1995.

Triarc Companies, 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 (''Security'') from listing and registration on the Pacific Stock Exchange Incorporated (''PSE'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security is currently listed on both the New York Stock Exchange (''NYSE'') and the PSE. The Company believes the added cost of maintaining both listings outweighs any incremental benefit the Company receives. Accordingly, the Company desires to terminate its listing on the PSE while maintaining its listing on the NYSE.

Any interested person may, on or before June 27, 1995, 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. 95–14257 Filed 6–9–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Washington, D.C. District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Washington, DC District Advisory Council will hold a public meeting on Wednesday, June 28, 1995 from 9 a.m. to 5 p.m. to be held in the Executive Conference Room at Bell Atlantic, 1710 H Street, N.W., 11th Floor, Washington, D.C. to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ms. Anita L. Irving, U.S. Small Business Administration, 1110 Vermont Avenue N.W., Suite 900, Washington, D.C. 20036, (202) 606–4000, Ext. 275.

Dated: June 6, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–14285 Filed 6–9–95; 8:45 am]

BILLING CODE 8025–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 112
Monday, June 12, 1995

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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 15, 1995, from 10 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Reports

—FCSBA Quarterly Report

C. New Business

1. Regulations

—Loans in Areas Having Special Flood Hazards [12 CFR part 614] (Joint Final)
—Capital Adequacy [12 CFR parts 615, 618, and 620] (Proposed)
—Related Services [12 CFR parts 611, 618, and 620] (Final)

***Closed Session**

A. New Business

—Enforcement Action

Dated: June 7, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9)

[FR Doc. 95–14414 Filed 6–8–95; 11:06 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 2:02 p.m. on Wednesday, June 7, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.
Matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Ms. Judith A. Walter, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision) and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: June 7, 1995.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 95–14415 Filed 6–8–95; 11:07 am]

BILLING CODE 6714–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: June 26, 1995 at 9:30 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–365–366 and 731–TA–734–735 (Preliminary) (Certain Pasta from Italy and Turkey)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 8, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–14417 Filed 6–8–95; 11:08 am]

BILLING CODE 7020–02–M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of NCD. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

DATES: July 24–26, 1995, 9:00 a.m. to 5:00 p.m.

LOCATION: Radisson Barcelo Hotel Washington, 2121 P Street, NW., Washington, DC, (202) 293–3100.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, NCD 1331 F Street, NW., Suite 1050, Washington, DC 20004–1107, Telephone: (202) 272–2004, (202) 272–2074 (TT).

AGENCY MISSION: NCD is an independent federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify NCD by July 21, 1995.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only designated

areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of NCD shall be open to the public.

AGENDA: The proposed agenda includes:

Report from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
ADA Town Meeting Tour Update
ADA Fifth Anniversary
ADA Report
National Disability Summit
Unfinished Business
New Business
Announcements
Adjournment

Records shall be kept of all NCD proceedings and shall be available after the meeting for public inspection at NCD.

Signed in Washington, DC, on June 5, 1995.

Speed Davis,

Acting Executive Director.

[FR Doc. 95–14400 Filed 6–8–95; 10:15 am]

BILLING CODE 6820–BS–M

Corrections

Federal Register

Vol. 60, No. 112

Monday, June 12, 1995

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

Animal and Plant Health Inspection Service

[Docket No. 95–038–1]

International Sanitary and Phytosanitary Standard-Setting Activities

Correction

In notice document 95–13241 beginning on page 28387 in the issue of Wednesday, May 31, 1995, make the following corrections:

1. On page 28388, in the first column, in the sixth line, ''customers'' should read ''consumers''.

2. On the same page, in the third column, in paragraph 6., the *Date of Meeting* should read ''February 19–23, 1996''.

3. On page 28389, in the first column, in paragraph 8., in the *General Purpose*, in the second line, ''director'' should read ''direction''.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceainc and Atmospheric Administration

50 CFR Part 625

[Docket No. 950206038–5038–01; I.D. 051595E]

Summer Flounder Fishery; Adjustments to 1995 State Quotas

Correction

In rule document 95–12935 beginning on page 27906 in the issue of Friday, May 26, 1995, make the following corrections:

On page 27907, in the table, in the seventh column, the third entry should read ''446,446''; and in the sixth column, in the fourth line, ''6,446'' should be removed.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35744; File No. SR–CBOE–95–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to the Examination Specifications for the General Securities Registered Representative (Series 7) Examination

Correction

In notice document 95–12983 beginning on page 28005 in the issue of Friday, May 26, 1995, make the following corrections:

1. On page 28006, in the third column, the signature should read ''**Jonathan G. Katz**''.

2. On the same page, in the same column, in the FR Doc. line, the file date should read ''5–25–95''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35746; FIle No. SR–CBOE–95–27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to the Examination Specifications for the General Securities Sales Supervisor (Series 8) Examination

Correction

In notice document 95–12982 beginning on page 28006 in the issue of Friday, May 26, 1995, make the following correction:

On page 28007, in the third column, the FR Doc. line was omitted and should appear after the signature as follows:

[FR Doc. 95–12982 Filed 5–25–95; 8:45 am]

BILLING CODE 8010–01–M

BILLING CODE 1505–01–D

federal register

Monday
June 12, 1995

Part II

Environmental Protection Agency

40 CFR Parts 117, 302, and 355
Reportable Quantity Adjustments; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 117, 302, and 355

[SW H–FRL–5214–3]

RIN 2050–AD33

Reportable Quantity Adjustments

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today is taking final action on changes proposed on October 22, 1993 to reportable quantities (RQs) for hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act. The person in charge of a facility or vessel from which a hazardous substance is released in excess of its RQs must notify appropriate authorities, who can then evaluate whether a response is needed. This rule revises the table of hazardous substances to add 47 individual Clean Air Act hazardous air pollutants; adjust their statutory one-pound RQs; add five other Clean Air Act hazardous air pollutants that are categories of substances and assign no RQ to the categories; and adjust RQs for 11 Resource Conservation and Recovery Act hazardous wastes. EPA also is making conforming changes to the Clean Water Act table of hazardous substances and the Emergency Planning and Community Right-to-Know Act tables of extremely hazardous substances.

EPA thoroughly evaluated the intrinsic properties of these substances to determine appropriate levels for the adjusted RQs; thus, this rule reflects a sound, scientific approach. The RQ adjustments are consistent with the Agency's common sense goals in that the rule will minimize net reporting and recordkeeping burdens. The rule results in an estimated net cost savings to industry and government of approximately $500,000 annually.

EFFECTIVE DATE: July 12, 1995.

ADDRESSES:

Docket: Copies of materials relevant to this rulemaking are contained in the U.S. Environmental Protection Agency CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202 [Docket Number 102 RQ-CAA]. The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 703/603–8917. The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, an administrative fee of $25 and a charge of $0.15 per page for each page after page 266 will be incurred. The docket will mail copies of materials to requestors who are outside the Washington, DC metropolitan area.

Release Notification: The toll-free telephone number of the National Response Center is 800/424–8802; in the Washington, DC metropolitan area, the number is 202/267–2675. The facsimile number for the National Response Center is 202/267–2165 and the telex number is 892427.

FOR FURTHER INFORMATION CONTACT: The RCRA/UST, Superfund, and EPCRA Hotline at 800/424–9346 (in the Washington, DC metropolitan area, contact 703/412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800/553–7672 (in the Washington, DC metropolitan area, contact 703/486–3323); or Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or at 703/603–8760.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
A. Statutory Authority
B. Background of this Rulemaking
C. Reportable Quantity Adjustment Methodology
D. Summary of Changes from the Proposed Rule
II. Response to Comments
A. Support for Proposed RQ Adjustments
1. Methylene Diphenyl Diisocyanate
2. Ethylene Glycol
B. Opposition to Proposed RQ Adjustments and/or Data
1. Xylenes
a. Aquatic Toxicity
b. Application of BHP
2. Dimethylformamide
3. Titanium Tetrachloride
4. Other Individual CAA Hazardous Air Pollutants
a. Biphenyl
b. 1,3-Butadiene
c. Cresols
d. Diethanolamine
e. Ethylene Glycol
5. K088
6. F037 and F038
C. Reporting Requirements for CAA Broad Generic Categories
1. Options for Assigning RQs
2. Definition and Scope of the Categories
3. Other Issues
D. Delisting Petition for Caprolactam
III. Changes to List of Hazardous Substances and Their RQs
IV. Changes to 40 CFR Parts 355 and 117
V. Regulatory Analyses
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates

I. Introduction

A. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96–510), 42 U.S.C. 9601 et seq., as amended, established broad Federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. The term ''hazardous substance'' is defined in section 101(14) of CERCLA chiefly by reference to various Federal environmental statutes. For example, the term includes ''any hazardous air pollutant listed under section 112 of the Clean Air Act'' (CAA), and ''any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act * * *,'' also known as the Resource Conservation and Recovery Act (RCRA). Under CERCLA section 102(a), any substance that, when released into the environment, may present substantial danger to public health or welfare or the environment may be designated as a CERCLA hazardous substance.

Section 102(b) of CERCLA establishes RQs for releases of CERCLA hazardous substances at one pound, unless a substance has a different RQ established under section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes EPA to adjust these RQs by regulation.

The person in charge of a vessel or facility from which a CERCLA hazardous substance has been released in a quantity that equals or exceeds its RQ must, under CERCLA section 103(a), immediately notify the National Response Center (see 40 CFR 302.6). The owner or operator of a facility from which an RQ or more of a CERCLA hazardous substance has been released must immediately notify State and local response authorities, as required by section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (Pub. L. 99–499), 42 U.S.C. 11001 et seq. (see 40 CFR 355.40).

B. Background of This Rulemaking

The CERCLA list is being changed in today's final rule because: (1) Amendments to the CAA, signed into law on November 15, 1990 (Pub. L. 101–549), incorporated additional substances into the CERCLA list; and (2) RCRA listing rules and the rule revising the RCRA toxicity characteristics also incorporated substances into the CERCLA list.

Under section 112 of the CAA, as amended, 190 specific substances or broad generic categories of substances are listed as hazardous air pollutants; 52 of these (47 individual substances and five broad generic categories of substances) did not previously appear individually on the list of CERCLA hazardous substances at 40 CFR 302.4. The substances not previously listed became hazardous substances pursuant to CERCLA section 101(14) upon enactment of the 1990 CAA Amendments and were assigned a one-pound statutory RQ under CERCLA section 102(b).

In an October 22, 1993 Notice of Proposed Rulemaking (NPRM) (58 FR 54836), EPA proposed to add the 47 hazardous air pollutants to the regulatory list of CERCLA hazardous substances at 40 CFR 302.4, and adjust their RQs. For the five CAA hazardous air pollutants that are broad generic categories, EPA requested public comment on five options for reporting that could potentially apply.[1]

The October 22, 1993 NPRM also proposed to adjust the RQs for certain hazardous wastes listed under RCRA. In today's final rule, the Agency is adjusting the RQs for four hazardous wastes (F025, K088, K090, and K091) included in the October 22, 1993 NPRM from their statutory one-pound levels. As proposed in the October 22, 1993 NPRM, EPA is readjusting the RQs for five additional RCRA wastes (F004, D023, D024, D025, and D026) that already have been designated as hazardous and assigned adjusted RQs. RQ adjustments for the two remaining RCRA wastes that are included in this final rule, F037 and F038, were proposed prior to the October 22, 1993 NPRM. On March 27, 1991, EPA evaluated F037 and F038 under the RQ adjustment methodology and proposed one-pound adjusted RQs for these wastes (56 FR 12826); the Agency is promulgating the one-pound RQs for F037 and F038 in this final rule.

C. Reportable Quantity Adjustment Methodology

In today's rule, EPA is promulgating adjusted RQs for the individual hazardous air pollutants based upon specific scientific and technical criteria that relate to the possibility of harm from the release of a CERCLA hazardous substance in certain amounts.[2] EPA's methodology for adjusting the RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. The intrinsic properties examined—called ''primary criteria''—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity.[3]

Generally, for each intrinsic property, EPA ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. The data for each hazardous substance are evaluated using various primary criteria; each hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the ''primary criteria RQ'' for that substance.

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria.

These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP).[4] If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its RQ (as determined by the primary RQ adjustment criteria), is generally raised one level.[5] Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance.

EPA indicated in an August 30, 1989 proposed rule (54 FR 35988) that substances could be further evaluated by applying the methodology for developing threshold planning quantities (TPQs) pursuant to EPCRA section 302, but has not yet incorporated the TPQ methodology as part of the RQ adjustment methodology in any final rule.

EPA currently is evaluating the RQ adjustment methodology to identify ways in which the methodology could be improved; for example, the Agency is considering whether the application of BHP to developmental toxicants should be limited. EPA is interested in receiving other suggestions for refining or improving the existing RQ adjustment methodology. It is important to note, however, that the Agency does not intend to formally respond as part of the rulemaking to suggestions provided by the public for changes to the RQ adjustment methodology.

D. Summary of Changes From the Proposed Rule

EPA has made the following changes from the October 22, 1993 NPRM. Each change is discussed in the preamble section noted (if applicable).

- Six RCRA hazardous wastes (K119, K120, K121, U354, U355, and U357) with RQ adjustments proposed in the October 22, 1993 NPRM are not included in today's final rule. These six wastes are proposed, but not yet finalized, as RCRA hazardous wastes and, thus, are not yet CERCLA hazardous substances, as defined by CERCLA section 101(14)(C).
- The Agency is promulgating one-pound final RQs for two RCRA wastes, F037 and F038, that did not appear in the October 22, 1993 NPRM (see Section II.B.6).
- In the October 22, 1993 NPRM, EPA proposed to add m-xylene, one of the 47 hazardous air pollutants, to Table 302.4 and to adjust its statutory one-pound RQ to 100 pounds. After reviewing data recently submitted by the commenters, however, EPA has decided to promulgate a 1,000-pound final RQ for m-xylene (see Section II.B.1).
- The Agency also proposed in the October 22, 1993 NPRM to add dimethylformamide, another hazardous air pollutant, to Table 302.4 and to adjust its statutory one-pound RQ to 10 pounds. After evaluating data submitted by the commenters, the Agency has decided in this final rule to promulgate a 100-pound final RQ for dimethylformamide (see Section II.B.2).
- Similarly, after reviewing comments submitted on the 100-pound RQ proposed for titanium tetrachloride in the October 22, 1993 NPRM, the Agency has decided to promulgate a 1,000-pound RQ for this substance in today's final rule (see Section II.B.3).
- EPA requested public comments on five options for assigning RQs to the

[1] For a list of these options, see Section II.C.1 of today's preamble.

[2] See Section II.C.1 of this preamble for a discussion of RQ adjustments for the five broad generic categories.

[3] For further information on assigning adjusted RQs to hazardous substances under the primary criteria, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 2, August 1986 (for chronic toxicity), Volume 3, July 1989 (for potential carcinogenicity), and Volume 1, March 1985 (for the four other primary criteria), available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[4] For further information on the methodology for applying BHP, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 1, March 1985, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[5] No RQ level increase based on BHP occurs if the primary criteria RQ is already at its highest possible level (100 pounds for potential carcinogens and 5,000 pounds for other types of hazardous substances). BHP is not applied to radionuclides.

CAA broad generic categories in the October 22, 1993 NPRM. In today's final rule, EPA is promulgating one of the scenarios described in Option 5, namely, the Agency is assigning no RQs to the categories, but will evaluate certain substances within the categories to determine whether they should be individually listed in Table 302.4 of 40 CFR 302.4, and be assigned RQs (see Section II.C.1).

II. Response to Comments

A. Support for Proposed RQ Adjustments

1. Methylene Diphenyl Diisocyanate

The proposed RQ adjustment for methylene diphenyl diisocyanate (MDI) from the statutory one-pound level to 5,000 pounds was supported by all of the 84 commenters who submitted comments regarding this substance.[6] The Agency agrees with commenters that the 5,000-pound adjusted RQ for MDI will reduce the number of reports of releases that are unlikely to pose a threat to public health or welfare or the environment, thereby reducing the reporting burden on industry and allowing EPA to focus its resources on those releases that are more likely to pose such threats.

The Agency is continuing to evaluate data on the chronic toxicity and potential carcinogenicity of MDI, as well as the potential carcinogenicity of p-phenylenediamine, another hazardous air pollutant included in today's final rule. Because these evaluations have not been completed, EPA is promulgating a 5,000-pound RQ for both MDI and p-phenylenediamine in today's final rule, as proposed. If, however, as a result of the potential carcinogenicity and chronic toxicity evaluations, the Agency determines that a change in the 5,000-pound RQ for either of these substances is warranted, EPA will propose to readjust the RQ for MDI and/or p-phenylenediamine in a separate rulemaking.

2. Ethylene Glycol

The proposed adjustment of the RQ for ethylene glycol from the statutory one-pound level to 5,000 pounds was supported by 75 of the 76 commenters who submitted comments on this substance.[7] It is important to note, however, that releases of ethylene glycol equal to or exceeding 5,000 pounds during a 24-hour period (e.g., from airplane de-icing operations) are reportable under CERCLA. If such a release is not federally permitted and, thus, is not exempt from CERCLA reporting and liability provisions, notification to the NRC under CERCLA and to the appropriate State emergency response commissions (SERCs) and local emergency planning committees (LEPCs) under EPCRA is required. The Agency anticipated that releases in excess of 5,000 pounds may occur and noted in the preamble to the October 22, 1993 NPRM that releases of ethylene glycol in de-icing operations equal to or exceeding the 5,000-pound RQ may qualify for reduced reporting as ''continuous releases.''[8]

B. Opposition to Proposed RQ Adjustments

1. Xylenes

In addition to RQ adjustments for the 47 individual CAA hazardous air pollutants, EPA also proposed an RQ adjustment for the hazardous substance category, ''xylene (mixed).'' This category is already listed in Table 302.4 as a CERCLA hazardous substance and represents a mixture of the three xylene isomers, m-xylene, o-xylene, and p-xylene, in any proportion. In 1990, the CAA Amendments added the three xylene isomers individually to the CAA section 112 list of hazardous air pollutants. In today's final rule, EPA is adding these three isomers as three separate entries in the 40 CFR 302.4 list of CERCLA hazardous substances.

In the October 22, 1993 NPRM, the Agency proposed to adjust the RQs for m-xylene and p-xylene to 100 pounds, and the RQ for o-xylene to 1,000 pounds. Because there are three substances within the xylenes category and EPA had sufficient data to assign RQs to each of these substances, the Agency also proposed to assign the lowest RQ of the individual member substances to the category. Specifically, EPA proposed to adjust the RQ for the ''xylene (mixed)'' category from 1,000 pounds to 100 pounds to be consistent with the data used to develop the 100-pound proposed RQs for the m- and p-xylene isomers. In today's final rule, the Agency is promulgating the 100-pound proposed RQ for ''xylene (mixed),'' as described below in Section II.B.1.a of the preamble.

It is important to note that the preceding paragraph only describes the Agency's adjustment of the RQ for the ''xylenes (mixed)'' category. This discussion does not address whether particular releases of mixed xylenes are reportable under various scenarios. The person in charge of a facility from which a release of mixed xylenes occurs should apply the mixture rule (as described in Section II.B.6 of today's preamble) on a case-by-case basis to determine if a particular release of mixed xylenes must be reported under CERCLA section 103 and EPCRA section 304. Essentially, the Agency's mixture rule provides that, if the quantity of each of the xylene isomers in a particular mixture of xylenes is known (and there are no other hazardous constituents in the xylenes mixture), reporting is required only when an RQ or more of m-, o-, or p-xylene is released. If, however, the quantity of one or more of the xylene isomers is unknown, reporting is required when 100 pounds or more of the total mixture of xylenes is released.

a. *Aquatic Toxicity.* Nine commenters favored promulgation of 1,000-pound adjusted RQs for m- and p-xylene and for the ''xylene (mixed)'' category, rather than the 100-pound RQs proposed for these substances. Six of the nine commenters asserted that the Agency had incorrectly assigned 100-pound primary criteria RQs to these substances. As correctly noted by these commenters, the 100-pound RQ adjustments proposed for m- and p-xylene were based on studies of fish species other than the standard species (i.e., fathead minnow or bluegill) preferred for assigning RQs based on aquatic toxicity. As stated in previous technical background documents to support RQ adjustment rulemakings, aquatic toxicity studies from other fish species may be used by the Agency to establish RQs when data on standard species are not available.

Several commenters performed and submitted additional studies (Springborn Laboratories (1994a and 1994b))[9] on the aquatic toxicity of m-

[6] Detailed responses to these comments on MDI are included in Section I.A of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[7] Detailed responses to these comments on ethylene glycol are included in Section I.B of the responses to comments document for this rulemaking, available at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[8] In addition to MDI and ethylene glycol, the Agency received a number of comments in support of RQs proposed for other individual hazardous air pollutants. Detailed responses to these comments are included in Section I.C of the responses to comments document for this rulemaking, available at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[9] Machado, M. 1994a. para-Xylene - Acute Toxicity to Fathead Minnow (*Pimephales promelas*) Under Flow-Through Conditions. Springborn Laboratories, Wareham, Massachusetts; and Machado, M. 1994b. meta-Xylene—Acute Toicity to Fathead Minnow (*Pimephales promelas*) Under Flow-Through Conditions. Springborn Laboratories, Wareham, Massachusetts.

and p-xylene using standard species. EPA has reviewed these and other standard species studies (Geiger et al. (1986, 1990))[10] submitted by the commenters on the xylene isomers.

Fathead minnow data on m-xylene in both the Geiger et al. (1990) and Springborn Laboratories (1994b) studies support the assignment of a 1,000-pound RQ for this substance.[11] In today's final rule, therefore, EPA is not promulgating the 100-pound RQ for m-xylene as proposed; rather, the Agency is promulgating a 1,000-pound RQ for this substance based, in part, on the aquatic toxicity data reported in Geiger et al. (1990) and Springborn Laboratories (1994b). (Chronic toxicity and ignitability data also support a 1,000-pound RQ for m-xylene.)

Fathead minnow data on p-xylene, however, as reported in both the Geiger et al. (1986) and Springborn Laboratories (1994a) studies, support the 100-pound RQ proposed for p-xylene in the October 22, 1993 proposed rule.[12] Therefore, EPA is finalizing a 100-pound adjusted RQ for p-xylene based on the standard aquatic toxicity data provided in Geiger et al. (1986) and Springborn Laboratories (1994a), and supported by the non-standard aquatic toxicity data used by EPA in the October 22, 1993 NPRM as the basis for the 100-pound RQ proposed for this substance.

With regard to the comments recommending a 1,000-pound RQ for the ''xylenes (mixed)'' category, although EPA appreciates the aquatic toxicity data provided by the commenters, the Agency is not using these data to determine an RQ for this hazardous substance category in the final rule. As noted previously, because there are three xylene isomers within the ''xylenes (mixed)'' category and EPA has sufficient data to assign RQs to each of these three substances, the Agency is assigning the lowest RQ of the individual member substances to the category. Thus, EPA is readjusting the 1,000-pound RQ for xylenes (mixed) to 100 pounds, as proposed, to be consistent with the 100-pound RQ for one of its member substances, p-xylene. Assigning a 100-pound RQ to the ''xylenes (mixed)'' category is consistent with other instances (e.g., cyanides) in which the Agency has assigned the lowest RQ of the individual member substances to a hazardous substance category, because the category contains only a limited number of substances and EPA has sufficient data to assign RQs to all of these substances in the category.

b. *Application of BHP*. Eight commenters contended that EPA did not properly evaluate xylenes for their susceptibility to degradation in the environment in proposing adjusted RQs for these substances in the October 22, 1993 NPRM. The Agency disagrees. EPA conducted a comprehensive search for data on both the primary RQ adjustment criteria and the secondary criteria of BHP, and was unable to locate any convincing degradation data indicating that application of BHP to raise the RQs of xylenes was warranted.[13] In addition, EPA applies the secondary RQ adjustment criteria of BHP to raise the RQ of a hazardous substance only when the reaction products are less hazardous than the parent substance. Data submitted on the xylenes indicate that the degradation products of xylenes in the atmosphere include 2,4-dimethylphenol and formaldehyde, each of which is a CERCLA hazardous substance with a 100-pound RQ. Because the RQs of these two degradative products are 100 pounds, application of the secondary criteria of BHP to the xylenes could not be used to raise the 1,000-pound RQs for m- and o-xylene or the 100-pound RQs for p-xylene and xylenes (mixed).

2. Dimethylformamide

One commenter opposed the 10-pound RQ proposed for dimethylformamide and asserted that a 100-pound RQ is more appropriate for this substance. To support this assertion, the commenter submitted data from a number of epidemiology and animal toxicity studies the commenter had used to challenge the Agency's classification of dimethylformamide as a probable human carcinogen. As the commenter correctly noted, the Agency proposed in the October 22, 1993 NPRM to adjust the RQ for dimethylformamide to 10 pounds, based on an evaluation of its potential carcinogenicity. Based on data reviewed at that time indicating limited evidence of carcinogenic effects in humans and inadequate evidence in animals, EPA classified dimethylformamide as a weight-of-evidence Group B1, probable human carcinogen. Combining this weight-of-evidence classification with a potency Group 2 classification resulted in a hazard ranking of ''medium'' and a proposed adjusted RQ of 10 pounds.

Since publication of the October 22, 1993 NPRM, however, the Agency has completed its own internal review of data on the potential carcinogenicity of dimethylformamide, including relevant data submitted by the commenter. As a result of this review, EPA agrees with the commenter that the weight of evidence is not currently sufficient to classify dimethylformamide as a Group B1, probable human carcinogen. For this reason, EPA has not relied on the potential carcinogenicity criterion as a basis for the RQ adjustment for dimethylformamide; rather, in today's final rule, the Agency is promulgating a 100-pound RQ for this substance based on chronic toxicity.

3. Titanium Tetrachloride

Two commenters asserted that a 1,000-pound primary criteria RQ is scientifically justified for titanium tetrachloride based on toxicity and, thus, more appropriate than the 100-pound RQ proposed for this substance. Although EPA continues to believe that a primary criteria RQ of 100 pounds is warranted for titanium tetrachloride,[14] the Agency has decided to promulgate an adjusted RQ of 1,000 pounds for this substance based on a re-evaluation of titanium tetrachloride under the secondary RQ adjustment criterion of hydrolysis. As noted in Section II.B.1.b of this preamble, one-level upward RQ adjustments based on hydrolysis are warranted only when the secondary products of the reaction are less toxic than the parent compound. The most prevalent secondary product of the titanium tetrachloride hydrolysis reaction is hydrochloric acid (or

[10] Geiger, D.L., S.H. Poirier, L.T. Brooke, D.J. Call, Eds. 1986. Acute Toxicities of Organic Chemicals to Fathead Minnows (*Pimephales promelas*). Vol III, Center for Lake Superior Environmental Studies, University of Wisconsin-Superior; and Geiger, D.L., S.H. Poirier, L.T. Brooke, D.J. Call, Eds. 1990. Acute Toxicities of Organic Chemicals to Fathead Minnows (*Pimephales promelas*). Vol V, Center for Lake Superior Environmental Studies, University of Wisconsin-Superior.

[11] For a detailed discussion of the studies on m-xylene, see Response Numbers II.A.3 and II.A.6 in Section II of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[12] The Agency disagrees with one commenter's assertion that data from Geiger et al. (1986) are unacceptable because of certain deviations from standard test conditions. For a detailed discussion of the studies on p-xylene, see Response Numbers II.A.3, II.A.4, and II.A.5 in Section II of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[13] For detailed responses to comments regarding the degradation of xylenes and application of BHP to these substances, see Response Numbers II.A.10 and II.A.11 in Section II of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[14] For further discussion of the chronic toxicity primary criterion RQ for titanium tetrachloride, see Response Number II.B.17 in Section II of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

hydrogen chloride gas), which is a CERCLA hazardous substance with a 5,000-pound RQ. In an August 30, 1989 rule (54 FR 35988), the Agency proposed to adjust the 5,000-pound RQ for hydrochloric acid to 100 pounds, based on application of the TPQ methodology (see Section I.C of today's preamble) as part of the RQ adjustment methodology. Because the proposed 100-pound RQ for hydrochloric acid (the reaction product) from the 1989 rule was no higher than the 100-pound primary criteria RQ for titanium tetrachloride (the parent compound), the Agency did not apply the secondary RQ adjustment criteria to raise the RQ for titanium tetrachloride in the October 22, 1993 NPRM.

As of today's final rule, however, EPA has not yet promulgated the 100-pound RQ for hydrochloric acid that was proposed in the August 30, 1989 rule and has not yet included the TPQ methodology as part of the RQ adjustment methodology in any final rule; thus, the current 5,000-pound RQ for hydrochloric acid still applies. This 5,000-pound RQ for hydrochloric acid is higher than the 100-pound RQ for titanium tetrachloride (i.e., the secondary product of the hydrolysis reaction is less toxic than the parent compound). Therefore, the Agency is applying the secondary RQ adjustment criterion of hydrolysis in today's final rule to raise the 100-pound primary criteria RQ for titanium tetrachloride one level to 1,000 pounds.[15]

4. Other Individual CAA Hazardous Air Pollutants

a. *Biphenyl*. Four commenters supported a 1,000-pound adjusted RQ for biphenyl, rather than the 100-pound RQ adjustment proposed in the October 22, 1993 NPRM. One of these commenters submitted data on the biodegradation of biphenyl and concluded that these data support a 1,000-pound RQ. After reviewing the data submitted by this commenter, the Agency disagrees with the commenter's conclusions. The data on biphenyl provided by the commenter do not meet several conditions necessary for adjustment based on biodegradation, including: (1) The substance must have a five-day biochemical oxygen demand (BOD_5) equal to or greater than 50% in ''unadapted'' media, which have not been previously exposed to the substance; and (2) the substance must be in a form that is available to microorganisms responsible for biodegradation.[16] Therefore, the Agency is promulgating an adjusted RQ of 100 pounds for biphenyl based on the chronic toxicity criterion, with no upward adjustment based on BHP.

b. *1,3-Butadiene*. Two commenters opposed the 10-pound proposed RQ for 1,3-butadiene. These commenters submitted potential carcinogenicity data to support the assertion that the potency factor calculated for 1,3-butadiene by the Agency in the proposed rule was ''at least an order of magnitude too high.'' According to the commenters, the Agency should recalculate a more accurate (and lower) value for the potency of 1,3-butadiene and should promulgate a 100-pound RQ for this substance, rather than the 10-pound proposed RQ.

Pending completion of its review of new epidemiology data on 1,3-butadiene submitted by the commenters, as well as data on the appropriate model for conducting quantitative risk assessments on this substance, the Agency will retain its current estimates, including a potency factor calculation of 8.4 $(mg/kg/day)^{-1}$ for RQ adjustment purposes.[17] This potency factor, coupled with a weight-of-evidence Group B2 classification, results in a final RQ of 10 pounds for 1,3-butadiene in today's final rule. EPA is continuing its comprehensive review of the potential carcinogenicity data on 1,3-butadiene to determine if a change in the Agency's potency factor estimate is necessary. The Agency will readjust the RQ for 1,3-butadiene in a separate rulemaking if its review results in an RQ other than 10 pounds for this substance.

c. *Cresols*. The Agency also proposed in the October 22, 1993 NPRM to adjust the RQ for another hazardous substance category, ''cresol(s),'' which, similar to ''xylene (mixed),'' is already listed in Table 302.4. This listing for the hazardous substance cresols represents a mixture of the three cresol isomers (m-cresol, o-cresol, and p-cresol) in any proportion. In 1990, the CAA Amendments added the three cresol isomers individually to the CAA section 112 list of hazardous air pollutants. In today's final rule, EPA is adding these three isomers as three separate entries in the 40 CFR 302.4 list of CERCLA hazardous substances.

In the October 22, 1993 NPRM, the Agency proposed adjustments to the statutory one-pound RQs for the three cresol isomers. EPA proposed to adjust each of the RQs for m-, o-, and p-cresol to 100 pounds based on studies published since the final rule designating the category cresols as a hazardous substance and assigning it a 1,000-pound RQ (see 51 FR 34561, September 29, 1986). Because there are three substances within the cresols category and EPA had sufficient data to assign 100-pound RQs to each of these substances, the Agency proposed to adjust the RQ for the ''cresol(s)'' category from 1,000 pounds to 100 pounds to be consistent with the data used to develop the 100-pound RQs for the m-, o-, and p-cresol isomers.

One commenter opposed the 100-pound RQ for the cresol isomers and asserted that the recent reclassification of cresols in the IRIS data base as a weight-of-evidence Group C, possible human carcinogen, was based on studies of doubtful validity. Based on data submitted to support its assertion, the commenter requested that EPA retain the 1,000-pound RQ for cresols, pending the outcome of EPA's decision on this matter.

EPA disagrees with the commenter that the 1,000-pound RQ for cresols should be retained. Hazardous substances are classified in weight-of-evidence Group C when the Agency determines that there is ''limited'' evidence of carcinogenicity in animals, in the absence of human data. According to EPA guidelines,[18] limited evidence of carcinogenicity in animals can be indicated by a wide variety of effects, including: (1) Malignant tumor responses in a single, well-conducted experiment that does not meet conditions for ''sufficient'' evidence; (2) tumor responses of marginal statistical significance in studies having inadequate design or reporting; (3) benign tumors (without malignant tumors) from an agent showing no response in a variety of short-term tests for mutagenicity; and (4) responses of marginal statistical significance in a tissue known to have a high or variable background rate of cancer.

EPA has carefully reviewed the data submitted by the commenter. As a result

[15] If EPA incorporates the TPQ methodology as part of the RQ adjustment methodology and adjusts the RQ for hydrochloric acid in a final rule, the RQ for titanium tetrachloride will be readjusted accordingly.

[16] For detailed responses to comments on the biodegradation of biphenyl, see Response Numbers II.B.4 and II.B.5 in Section II of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[17] For detailed responses to comments on the potential carcinogenicity of 1,3-butadiene, and EPA's basis for using its current estimates to adjust the RQ for this substance, see Response Numbers II.B.7 and II.B.8 in the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[18] U.S. EPA 1988. Methodology for Evaluating Potential Carcinogenicity in Support of Reportable Quantity Adjustments Pursuant to CERCLA Section 102. Office of Health and Environmental Assessment, Washington, DC.

of this review, EPA has decided to retain its classification of each of the cresol isomers (m-, o-, and p-cresol) in weight-of-evidence Group C, possible human carcinogen. The deficiencies noted by the commenter regarding the in vitro and in vivo studies relied on by the Agency are reasons for the Agency's decision not to classify the evidence of carcinogenicity as ''sufficient.''[19] Reviewed together, however, these studies do provide limited evidence of animal carcinogenicity and, thus, justify classification of the cresol isomers in weight-of-evidence Group C. The Agency, therefore, will retain its original decision to adjust the RQ for cresols from 1,000 to 100 pounds, and to establish final RQs of 100 pounds for each of the cresol isomers.[20]

d. *Diethanolamine.* Three commenters opposed the 100-pound proposed RQ for diethanolamine based on the chronic toxicity criterion. The commenters asserted that a primary criteria RQ of 1,000 pounds is more appropriate for this substance, and that application of the secondary RQ adjustment criterion of biodegradation should be applied to raise the final RQ to 5,000 pounds.

Under the methodology for developing primary criterion RQs based on chronic toxicity, a substance is first assigned two rating values, one based on the dose that causes a particular effect, and one based on the severity of the effect. The dose rating value (RV_d) ranges from one to 10, with 10 representing the most toxic substances. The effect rating value (RV_e) also ranges from one to 10, with 10 representing the most severe effect. The product of the RV_d and RV_e for a substance yields a composite score between one and 100. Tentative chronic toxicity RQs are then assigned on the basis of the composite score.[21]

Because no chronic toxicity studies have been reported for diethanolamine, both EPA and the commenters used data from a 13-week subchronic study (Melnick (1992)[22] to develop their respective conclusions. Based on a different interpretation of these same data, the commenters supported use of an RV_e of 5, rather than the RV_e of 7 used by EPA to assign a 100-pound primary criterion RQ for diethanolamine. The commenters generally agreed with the Agency on an RV_d of 3.8 for the substance.

In supporting an RV_e of 5 for diethanolamine, one of the commenters asserted that increased blood urea nitrogen (BUN) is incorrectly listed as an effect and that reported kidney changes do not identify impairment of kidney function. EPA disagrees; upward trends in relative kidney weight and BUN have been observed together, suggesting that kidney function (i.e., removal of excess urea) in the exposed animals is impaired, resulting in increased kidney weight. The Agency, therefore, considers it appropriate to place diethanolamine in RV_e category 7 because of the observed ''necrosis * * * with a detectable decrement of organ function.'' This results in a composite score of 26.6 (i.e., 3.8 RV_d x 7 RV_e) and a corresponding chronic toxicity primary criterion RQ of 100 pounds.

This commenter also supported raising the primary criterion RQ for diethanolamine one level, based on the secondary criterion of biodegradation. Two (Bridie et al. (1979) and Gannon et al. (1978))[23] of the eight studies submitted by the commenter on the biodegradation of diethanolamine reported BOD_5 values equal to or greater than the standard for upward RQ adjustment on the basis of biodegradation. These experiments, however, were conducted using ''adapted'' sewage sludge (see previous discussion on biphenyl), rather than under conditions normally found in the environment. One (Bridie et al. (1979)) of these two studies also evaluated diethanolamine using unadapted sewage sludge, but the result was a BOD_5 of only two percent.

Because the data provided by the commenter do not justify application of the secondary RQ adjustment criterion of biodegradation to diethanolamine, the Agency has promulgated a final RQ of 100 pounds (as proposed) based on chronic toxicity.

e. *Ethylene Glycol.* One commenter stated that, based on the incidence of pet and wildlife poisonings due to ingestion of ethylene glycol antifreeze, the 5,000-pound proposed RQ for ethylene glycol is inappropriate. The commenter asserted that, by raising the RQ to 5,000 pounds, EPA would be sending the false message that ethylene glycol is not dangerous. According to the commenter, such a message would result in reduced attention to all but the largest releases of this substance. For this reason, the commenter urges EPA to retain a one-pound RQ for ethylene glycol.

While EPA shares the concerns expressed by the commenter regarding acute exposures to ethylene glycol, the Agency believes that a lower RQ for ethylene glycol would not necessarily prevent accidental poisonings to humans, pets, and wildlife. RQs under CERCLA serve only to notify the Federal, State, and local governments of the release so that authorities can determine whether a response is necessary under the particular circumstances of the release.

In addition, the technical data supplied by the commenter do not support assignment of an RQ for ethylene glycol below 5,000 pounds. Under EPA's RQ adjustment methodology, an acute mammalian toxicity RQ for oral exposure to a hazardous substance (e.g., ethylene glycol) is determined based on the dose that is lethal to 50 percent of the animal population tested (known as the LD_{50} value). For the oral exposure route, LD_{50}s of between 100 and 499 milligrams per kilogram (mg/kg) define the range that results in a 5,000-pound RQ based on acute mammalian toxicity. LD_{50} values above 499 mg/kg also result in RQs at the maximum 5,000-pound level; LD_{50}s below 100 mg/kg result in RQs between one and 1,000 pounds.

The commenter supplied several pieces of information to support the position that ethylene glycol should be assigned a one-pound RQ. This information included studies on the toxicity of ethylene glycol, a table showing regulation of ethylene glycol under Federal environmental statutes (e.g., the CAA and CERCLA), and newspaper articles describing accidental poisonings. EPA has carefully reviewed these materials. None of the data submitted by the commenter support an RQ of one-pound; in fact, all of these data are well above the upper bound of the range of acute mammalian toxicity

[19] For further information on the data and findings of the in vitro and in vivo studies, see Section 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 7, available for inspection as part of the public docket for this rulemaking at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[20] For detailed responses to the comments on the carcinogenicity of cresols, see Response Numbers II.B.10 and II.B.11 in Section II of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[21] For further information on the relationship of composite scores to tentative chronic toxicity RQs, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 2, available for inspection as part of the public docket for this rulemaking at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[22] Melnick, R.L., 1992. NTP Technical Report on the Toxicity Studies of Diethanolamine (CAS No. 111–42–2) Administered Topically and in Drinking Water to F344/N Rats and B6C3F1 Mice. National Toxicology Program. NIH Publication No. 92–3343.

[23] Bridie, A.L. et al., 1979. Biochemical Oxygen Demand and Chemical Oxygen Demand of Some Petrochemicals. *Water Research* 13:627–30; and Gannon, J.E. et al., 1978. Microbial Degradation of Diethanolamine and Related Compounds. *Microbios.* 23:7–18.

data (499 mg/kg) that define a 5,000-pound RQ.[24]

The commenter also provided a table showing that ethylene glycol, unlike propylene glycol, is regulated under various environmental statutes. The commenter appears to be using the table to suggest that ethylene glycol is the more toxic of the two substances. Regardless of whether this assertion is correct, listing of ethylene glycol (i.e., under the CAA and CERCLA) indicates only that an RQ must be assigned to this CERCLA hazardous substance, but does not provide the technical data needed to support a particular RQ. The newspaper articles submitted by the commenter do not provide any data that can be used to adjust the RQ for ethylene glycol.

As noted above, all of the data from the studies submitted by the commenter are above the range of acute mammalian toxicity data that result in a 5,000-pound RQ. In fact, EPA has assigned a lower primary criteria RQ based on chronic toxicity (1,000 pounds) than indicated based on mammalian toxicity (5,000 pounds). The Agency then applied the secondary RQ adjustment criteria of BHP, which resulted in an upward adjustment of the 1,000-pound chronic toxicity RQ to 5,000 pounds based on ethylene glycol's susceptibility to biodegradation in the environment.

Thus, EPA does not have sufficient technical justification to establish a one-pound adjusted RQ for ethylene glycol, as requested by the commenter. Nevertheless, the Agency encourages users of ethylene glycol to exercise greater precautions to help prevent accidental poisonings. In addition, EPA would like to clarify that the 5,000-pound final RQ for ethylene glycol should not be interpreted as a determination that smaller releases are safe under all possible release scenarios.

5. K088

To assign an RQ to a hazardous waste stream, the Agency first identifies the substances that are constituents of the waste stream (as listed in 40 CFR part 261, Appendix VII) and determines the RQs for these constituents. The lowest of the constituent RQs becomes the RQ for the waste stream. In the case of spent potliner wastes (K088), the only hazardous constituent is cyanide, which is a CERCLA hazardous substance with a final RQ of 10 pounds (50 FR 13456, April 4, 1985). For this reason, EPA proposed an RQ of 10 pounds for waste stream K088 in the October 22, 1993 NPRM.

One commenter requested that the proposed 10-pound RQ for K088 be raised to 1,000 pounds based on the cyanide content of this waste stream. The Agency notes, however, that the RQ adjustment methodology does not consider the ''content'' or concentration of a constituent in the waste stream in determining an RQ for that waste stream. Therefore, EPA is promulgating a 10-pound RQ for K088 in today's final rule.

6. F037 and F038

As noted in Section I.B., the Agency has decided to promulgate final RQs for two hazardous waste streams (F037 and F038) for which RQs were proposed on March 27, 1991 (56 FR 12862). For this reason, EPA is addressing the two comments submitted on this previous proposal in today's final rule.

The two commenters supported EPA's methodology of applying the Agency's ''mixture rule'' in determining whether CERCLA notification for F037 and F038 is required, but opposed an RQ of one pound for F037 and F038 when constituent quantities of the waste are unknown.

Under the mixture rule, as set forth in 40 CFR 302.6(b), if the quantity of each of the constituents of a waste is known, reporting is required only when an RQ or more of any of the individual hazardous constituents is released. Knowledge that the average quantities of hazardous constituents in several waste streams with the same identification number (e.g., F037) are below their respective hazardous constituent RQs is not a sufficient basis for applying this provision of the mixture rule to all waste streams with that identification number.

The Agency's mixture rule also provides that, if the quantity of one or more of the hazardous constituents is unknown, reporting is required when an RQ or more of the waste itself is released. Thus, if the quantity of one or more of the constituents of F037 or F038 was unknown, reporting would be required when the amount of the waste stream released is one pound or more.

EPA believes that the one-pound adjusted RQs for waste streams F037 and F038 are necessary to fulfill the Agency's CERCLA mandate to protect public health and welfare and the environment from releases of these waste streams that may contain concentrations of hazardous constituents greater than those considered ''typical'' by the commenter.[25]

C. Reporting Requirements for CAA Broad Generic Categories

1. Options for Assigning RQs

Of the broad generic categories of chemicals listed as hazardous air pollutants by the CAA Amendments, five categories—cobalt compounds, glycol ethers, manganese compounds, fine mineral fibers, and polycyclic organic matter—were not previously on the CERCLA list.

In the October 22, 1993 NPRM, EPA requested public comments on the following five options for addressing the CERCLA reporting requirements for these broad categories:

(1) Assign no RQ level to the CAA broad generic categories;

(2) Retain a one-pound RQ for these categories (i.e., the lowest RQ EPA assigns to individual hazardous substances);

(3) Assign an RQ to each category that reflects either the average RQ or the lowest RQ of the substances within each category;

(4) Assign a 5,000-pound RQ to each category (i.e., the highest RQ EPA assigns to individual hazardous substances); or

(5) Identify and assign an RQ to certain substances within each category. For the remaining substances within each of the five categories not assigned a specific RQ, assign no RQ, retain a one-pound RQ, assign an average or lowest RQ, or assign a 5,000-pound RQ.

In the preamble to the proposed rule, EPA described a variety of factors that it would consider in choosing an option that protects public health and welfare and the environment. These factors included: the length of time EPA would need to evaluate a large number of compounds individually; the need to have meaningful information reported to the National Response Center (i.e., avoiding either too much or too little information); and the need to avoid unnecessary and costly reporting burdens. After careful evaluation of these factors and consideration of all public comments on the five options, the Agency believes that, as suggested by 34 of the 44 commenters who addressed the options, the most effective balance of these factors would be to implement one of the reporting scenarios described in Option 5. Under

[24] For a detailed response to this comment on ethylene glycol, see Response Number II.B.16 in Section II of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[25] For a detailed discussion of these responses to comments on F037 and F038, see Response Numbers V.1 and V.2 in Section V of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

the selected option, the Agency is assigning no RQ level to the five CAA broad generic categories, but will evaluate and may individually list in Table 302.4 of 40 CFR 302.4 certain substances within the categories, and assign RQs to these substances.

In response to five commenters' requests to accelerate promulgation of the RQ adjustments for the hazardous air pollutants proposed in the October 22, 1993 NPRM, the Agency expedited the schedule for today's final rule; for this reason, the Agency has not yet implemented the portion of Option 5 that involves identifying additional substances within the categories to determine if individual listing in Table 302.4 is warranted, but will do so at a later date.

The remainder of Section II.C first provides an overview of EPA's evaluation of each of the five options using the factors presented in the proposed rule. This overview also includes the number of commenters that favored each option. The public comments are then summarized and responses provided by the following topic areas: (1) Definition and scope of the categories; and (2) other issues.

Selecting Option 1 (assigning no RQ to the five CAA broad generic categories) would eliminate the time needed for EPA to evaluate member substances individually. Option 1 also would be the least costly and burdensome of the options because reporting of such member substances would not be required (except for those that are already listed separately). The major disadvantage of Option 1 is that it does not contain any provisions for individually listing and assigning RQs to specific substances in future rulemakings. EPA believes that upon further identification and analysis of the substances within the categories, there may be certain individual substances that merit separate listing and reporting requirements to protect adequately public health and welfare and the environment. Eight commenters favored Option 1.

The Agency decided that Option 2 (retaining a one-pound RQ for the category) would be infeasible for a variety of reasons. As correctly noted by several commenters, a one-pound RQ would not take into consideration the varying characteristics of all of the specific compounds in the categories. Thus, Option 2 would result in a large burden on the regulated community for reporting small releases of thousands of substances whose inherent chemical characteristics do not warrant reporting at such low release levels. In addition, the large number of reports of small releases would hinder the National Response Center's ability to receive and process meaningful information and, therefore, the government's ability to respond to releases that are much more likely to pose a threat to public health or welfare or the environment. No commenters favored Option 2.

Similarly, the Agency determined that Option 3 (assign an RQ to each category that reflects either the average RQ or the lowest RQ of the substances within the category) would be infeasible. Assigning an average RQ to the categories, in addition to the disadvantages of Option 2, would be extremely time- and resource-intensive because EPA would need to evaluate all known individual substances within each category to determine an RQ for each so that an average RQ for the category could be calculated. Assigning the lowest RQ of the member substances to the category, similar to Option 2, would result in reporting of a large number of small releases that would hinder government response capabilities. This portion of Option 3 also would be time- and resource-intensive because EPA would need to evaluate the substances within the categories to determine the lowest RQ of the member substances. No commenters favored Option 3.

Option 4 (assign a 5,000-pound RQ to each category) would be less burdensome than Options 2 and 3, but also would be technically inappropriate for certain substances that may pose greater hazards. Only two commenters favored Option 4.

Option 5 involves identifying and assigning RQs to certain substances within each category, but contains several possible variations on how to treat the remaining substances (i.e., assign no RQ, assign a one-pound RQ, assign an average or lowest RQ, or assign a 5,000-pound RQ). These variations correspond to the previous four options. A total of 34 commenters favored Option 5 as an acceptable variation of Option 1.

EPA has concluded that Option 5 is preferable to the other four options because it allows the Agency greater flexibility to achieve the appropriate balance between reporting burdens, the amount of time needed for EPA to evaluate individual member substances, and protection of public health and welfare and the environment. In particular, EPA has chosen the variation of Option 5 under which the Agency assigns no RQ to the category but identifies, designates, and assigns RQs to certain individual substances within the category at a later date. Thus, reporting will be required for these substances, but not for other substances within the categories that do not merit separate CERCLA listing. This process of identifying member substances and assigning RQs will require a considerable amount of time and Agency resources, which will vary depending on the number of substances designated. The major advantage of this variation of Option 5 is that reports to the National Response Center will be limited to information that specifically applies to substances that have been evaluated and for which a determination has been made that they should be individually listed in Table 302.4 of 40 CFR part 302.

It is important to note that CERCLA liability continues to apply to releases of all compounds within each category, even if these compounds are not listed separately in Table 302.4 and, therefore, RQs have not been assigned. Parties responsible for releases of hazardous substances that fall under any of the five CAA broad generic categories are liable for the costs associated with cleanup and any natural resource damages resulting from the release.

2. Definition and Scope of the Categories

Five commenters noted that certain footnotes from the CAA Amendments of 1990 that apply to three of the five CAA broad generic categories (glycol ethers, fine mineral fibers, and polycyclic organic matter) were not included in the October 22, 1993 NPRM. The commenters asserted that, without these footnotes, the listings for these three categories in Table 302.4 of 40 CFR 302.4 would be unclear and subject to different interpretations. For this reason, the commenters urged EPA to include the footnotes to these three CAA categories in the regulatory list of CERCLA hazardous substances (i.e., Table 302.4).

In the October 22, 1993 NPRM, the Agency intended that the proposed listings in Table 302.4 of 40 CFR 302.4 for these hazardous air pollutants (including the five CAA broad generic categories) be the same as the listings for these substances in the CAA Amendments (subject to clarification by regulations implementing these amendments). As the commenters correctly note, footnotes 2, 3, and 4 in the CAA Amendments that limit the CAA section 112 listings of ''glycol ethers,'' ''fine mineral fibers,'' and ''polycyclic organic matter,'' respectively, also apply to these same listings in Table 302.4. To clarify this issue in today's final rule, EPA is revising the three category listings (glycol ethers,[2] fine mineral fibers,[3] and polycyclic organic matter[4]) proposed in

the October 22, 1993 NPRM to add the applicable footnotes from the CAA Amendments of 1990:

[2] Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-$(OCH2CH2)_n$-OR′ where

n = 1, 2, or 3

R = alkyl or aryl groups

R′= R, H, or groups which, when removed, yield glycol ethers with the structure: R-$(OCH2CH2)_n$-OH.[26] Polymers are excluded from the glycol category.

[3] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

[4] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100 °C. (42 U.S.C.A. 7412 (b)(1))

EPA believes that such clarification will assist persons in charge of vessels and facilities in determining whether a release contains a substance within these three CAA categories and, thus, a CERCLA hazardous substance subject to liability, response, and abatement provisions under CERCLA.

Some commenters asserted that, even with the inclusion of these footnotes from the CAA Amendments of 1990, the definitions of the glycol ethers, fine mineral fibers, and polycyclic organic matter categories are overly broad. The Agency agrees that, although the categories have been partially limited in definition and scope by the footnotes noted above, the categories remain broad. The only action EPA is taking in this rulemaking is to codify the listings of polycyclic organic matter, glycol ethers, and fine mineral fibers on the regulatory list of hazardous substances in Table 302.4 of 40 CFR 302.4. Any further clarification of the definitions of these categories would more appropriately be addressed under regulations implementing CAA section 112.[27]

Four commenters concluded that, because of the footnote limiting the definition of the category fine mineral fibers, refractory ceramic fibers (RCF) and other manmade vitreous fibers (MMVF) are not within the scope of the category and, thus, are not CERCLA hazardous substances. Provided RCF and other MMVF have an average diameter larger than one micrometer, the Agency agrees that these substances would not fall within the fine mineral fibers category under CERCLA and, thus, would not be subject to release reporting and liability requirements. Should RCF or other MMVF, however, have an average diameter of one micrometer or less, these substances would be considered hazardous substances and, therefore, would be subject to CERCLA requirements.

One of these four commenters requested that any CERCLA listing of MMVF, including RCF, apply only to air emissions and should not include releases to water or land. The commenter stated that EPA's CERCLA listing for asbestos appears to provide a precedent for its recommended approach. EPA disagrees with the commenter's recommendation because CERCLA regulates releases of hazardous substances to all environmental media. For example, the listing of asbestos as a CERCLA hazardous substance encompasses all forms of this substance; it is only the reporting requirement that is limited to releases of ''friable'' forms of asbestos. Nevertheless, releases of ''friable'' asbestos to environmental media other than air remain subject to CERCLA reporting requirements and any releases of asbestos remain subject to the liability scheme under CERCLA. Similarly, releases of fine mineral fibers that are listed individually in Table 302.4 into any environmental medium are subject to reporting and releases of any fine mineral fibers that fall within the CAA fiber-size limitation (one micrometer or less) to any environmental medium are subject to CERCLA's liability scheme.

Owners and operators of underground storage tanks containing substances that may fall within the five CAA broad generic categories have requested guidance regarding the scope of these categories to assist them in determining whether they are regulated under RCRA Subtitle I. For an underground storage tank to fall under the regulatory jurisdiction of RCRA Subtitle I, the tank must store a ''regulated substance.'' The term regulated substance is defined as petroleum and CERCLA hazardous substances, as defined in CERCLA section 101(14) (excluding RCRA hazardous wastes) (see 40 CFR 280.12). To assist in determining whether particular substances stored are members of the CAA categories and, therefore, are CERCLA hazardous substances subject to the RCRA Subtitle I underground storage tank regulations, owners and operators may refer to the definitions of these categories in section 112 of the CAA. Appropriate Agency offices will coordinate to develop a process to further assist owners and operators in making this determination.

3. Other Issues

Three commenters requested that EPA identify by Chemical Abstract Service Registry Number (CASRN) the substances within the CAA broad generic categories for which releases must be reported. EPA's choice of Option 5 satisfies this request. Because EPA is assigning no RQ to these five categories, only releases of substances individually listed with an RQ and CASRN in Table 302.4 require CERCLA notification. Therefore, in effect, EPA already has identified by CASRN in Table 302.4 the CERCLA hazardous substances for which releases must be reported.

Another commenter suggested that, because categories may not be identical in potential hazard, different reporting options may be suitable for different categories. The Agency does not agree that implementing differing approaches to reporting requirements for the different broad generic categories is warranted. The main similarity among the categories is that each contains hundreds or thousands of substances with varying toxicities. Based on this similarity, and on a variety of other factors considered by the Agency (see Section II.C.1 for a discussion of these factors), EPA decided that assigning a single RQ to a particular category is inappropriate for all five categories. Thus, for each of the five CAA categories, the Agency is assigning no RQ.

A different commenter suggested that overreporting would result if EPA were to assign an RQ for only a few specific compounds within a category. EPA disagrees with this assertion. In an April 4, 1985 final rule (50 FR 13456), and in several subsequent final rules, the Agency assigned adjusted RQs to specific substances that are listed individually in Table 302.4 and that also fall within the broad generic categories listed under CWA section 307(a). Adjusted RQs for some of these individually listed CWA substances have been in place for nearly 10 years. Based on the number of releases of these individually listed CWA substances that have been reported to the National Response Center, there is no indication that overreporting has resulted in the case of the CWA broad generic categories. Similarly, EPA does not believe that overreporting would occur

[26] The Agency would like to note that a typographical error has been made in the second mention of the chemical formula for glycol ethers in footnote 2 from the CAA Amendments. This formula appears in the CAA Amendments as ''R-$(OCH2CH)_n$-OH.'' In Table 302.4 of today's final rule, an additional ''2'' has been added within the parentheses; thus, the formula in the regulation will read ''R-$(OCH2CH2)_n$-OH,'' rather than the way it appears in the CAA Amendments.

[27] For detailed responses to specific comments on the scope of these five CAA categories, see Section III.A of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

for the CAA broad generic categories if the Agency, as a result of its evaluation of the CAA categories, chooses to list specific substances within the categories and assign RQs to these substances.

The same commenter asserted that, if EPA assigned an RQ to only one compound within a CAA broad generic category, a facility could be out of compliance if it chose not to report a release of that compound. In fact, each of the five CAA broad generic categories in today's final rule contains at least one substance that already is individually listed as a CERCLA hazardous substance with an RQ in Table 302.4. Examples of separately listed CERCLA hazardous substances that are members of the categories include cobaltous bromide (cobalt compounds), 2-ethoxyethanol (glycol ethers), potassium permanganate (manganese compounds), asbestos (fine mineral fibers), and benzo[a]pyrene (polycyclic organic matter). Under CERCLA section 103, releases equal to or greater than the RQs for these hazardous substances must be reported to the National Response Center as soon as the person in charge has knowledge of the release. Thus, EPA agrees with the commenter's assessment that a facility would be out of compliance if it failed to report a release of an RQ or more of an individually listed substance within any of the CAA broad generic categories.

In addition, the same commenter noted that, if a facility has no knowledge of the specific compounds released, then only the CAA broad generic category reporting requirement (i.e., no RQ for the category) would apply. This assertion, however, is inaccurate with respect to releases of hazardous substances that are within one of the generic listings and that also are individually listed in Table 302.4 with corresponding RQs.

Under CERCLA section 103(a), notification must occur when the person in charge of a facility has knowledge of a release of such a hazardous substance in an amount that equals or exceeds an RQ. This includes individually listed hazardous substances within the CAA broad generic categories. The determination of whether the person in charge has knowledge depends on the actions that a person in that position could reasonably be expected to take under the circumstances. In evaluating possible enforcement proceedings for failure to comply with the CERCLA section 103 reporting requirement, the Agency's determination whether the person in charge had knowledge will be made on a case-by-case basis. EPA believes that the most prudent course of action for the person in charge would be to identify the substance(s) being released and to determine if the amount of the substance(s) released equals or exceeds an RQ. The Agency believes that this approach on the part of persons in charge would also help to avoid overreporting.

A different commenter expressed confusion because EPA failed to mention, in the October 22, 1993 NPRM, the commenter's 1992 petition to designate and assign RQs to about 20 ethylene glycol ethers within the larger CAA category of glycol ethers.[28] When the proposed rule was published, however, the Agency was still evaluating various options for applying reporting requirements to the five CAA broad generic categories, including ''glycol ethers.'' Only after receiving and evaluating comments on the five options presented in the October 22, 1993 NPRM, did the Agency decide to select Option 5. EPA believes that responding to the commenter's petition to adjust RQs of substances within the glycol ethers category, prior to an Agency decision on the appropriate reporting requirements for the category, would have been premature and might have led to confusion within the regulated community about what reporting requirements apply to the CAA category of glycol ethers. Following promulgation of today's final rule, however, EPA will begin to evaluate the data submitted by the commenter to determine whether individual listing in Table 302.4 and RQ adjustment of specific ethylene glycol ethers is warranted under the selected Option 5.

Two commenters suggested that EPA could establish subcategories within the CAA broad generic categories, and assign separate RQs to the subcategories. For example, one commenter suggested that EPA assign a low RQ to the subcategory of carcinogenic polynuclear aromatic hydrocarbons (PAHs) within the larger CAA category of polycyclic organic matter, and a higher RQ for non-carcinogenic PAHs. EPA appreciates the commenters' suggestion and may consider using these subcategories in any future determination of whether individual listing in Table 302.4 and RQ adjustment of specific PAHs (or subcategories of PAHs) is warranted.

One commenter claimed that only individual chemicals listed under CAA section 112 are CERCLA hazardous substances, and that CAA category members not otherwise listed under CERCLA need not be reported at the one-pound level. The Agency disagrees with the commenter's assertion that the one-pound statutory RQs did not require reporting of substances (other than those listed separately in Table 302.4) within the CAA categories *prior* to this final rule. CERCLA section 101(14)(E) states that the term ''hazardous substance'' includes ''any hazardous air pollutant listed under section 112 of the Clean Air Act.'' Thus, the CAA categories automatically became hazardous substances by virtue of their listing as hazardous air pollutants under CAA section 112. CERCLA section 102(b) provides that an RQ of one pound applies to hazardous substances (which include the CAA hazardous air pollutants) until this RQ is adjusted by regulation. All substances within the categories, as well as the categories themselves, are CERCLA hazardous substances. Therefore, during the period beginning with the signing of the CAA Amendments of 1990 and ending with the effective date of today's final rule, the one-pound statutory RQs for the categories have applied to all substances within the categories.

One commenter requested that the Agency consider a low-percentage threshold for the CAA categories below which a component of a mixture may be excluded from regulation. Unless permitted or exempted, the release of an RQ or more of a hazardous substance must be reported, regardless of the concentration of the substance released. Notification of releases of hazardous substances that equal or exceed an RQ, even those with relatively low concentrations, is mandated by CERCLA and EPA believes that such reports are essential to allow government personnel to decide whether a response action is necessary to protect public health or welfare or the environment.[29]

D. Delisting Petition for Caprolactam

Two commenters requested that EPA respond to a delisting petition for caprolactam submitted on July 19, 1993. One of the commenters asserted that, ''upon the removal of caprolactam from the [CAA section 112] list of 'hazardous air pollutants,' caprolactam will no longer be a CERCLA 'hazardous substance' under CERCLA § 101(14) * * *''

This assertion, however, is not a complete characterization of the CERCLA authority for listing

[28] Petition to Adjust the Reportable Quantity for Glycol Ethers under CERCLA Section 102. July 8, 1992. From Gordon D. Strickland, Chemical Manufacturers Association to Barbara Hostage, Emergency Response Division, U.S. EPA.

[29] For detailed responses to comments on other issues related to the five CAA broad generic categories, see Section III.C of the responses to comments document for this rulemaking, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

caprolactam as a hazardous substance. As the commenter correctly notes, caprolactam is included in the definition of ''hazardous substance'' because it has been listed as a hazardous air pollutant under the CAA, and CERCLA section 101(14)(E) incorporates by reference any hazardous air pollutant listed under section 112 of the CAA. The commenter has failed to mention, however, that under CERCLA section 101(14)(B), the term ''hazardous substance'' also includes ''* * * any element, compound, mixture, solution, or substance designated pursuant to section 102 of [CERCLA] * * *.'' CERCLA section 102(a) authorizes EPA to designate as hazardous and assign RQs to those substances which, when released into the environment, may present substantial danger to the public health or welfare or the environment.

Furthermore, the regulations governing designation of hazardous substances (40 CFR 302.4(a)) provide that ''[t]he elements and compounds and hazardous wastes appearing in Table 302.4 are designated as hazardous substances under section 102(a) of [CERCLA].'' Thus, once a hazardous substance listed under any of the statutes referred to in CERCLA section 101(14) is added to the regulatory list at 40 CFR 302.4, that substance automatically is also designated as a hazardous substance under CERCLA section 102(a). As the commenter acknowledges, caprolactam has been proposed to be added to the list at 40 CFR 302.4; therefore, upon the effective date of this final rule, caprolactam is also designated as a hazardous substance under CERCLA section 102(a), not only under section 101(14)(E).

If the commenter is correct that its petition to delist caprolactam under CAA section 112 will be granted,[30] then EPA would evaluate caprolactam to determine whether there is any independent basis for retaining this substance as hazardous under section 102(a) of CERCLA and 40 CFR 302.4(a). If EPA determines that there is no independent basis for retaining caprolactam in Table 302.4, it may be possible to delete caprolactam from the CERCLA list of hazardous substances simultaneously with delisting under the CAA.

In addition, the commenter cited a May 25, 1983 proposed rule (48 FR 23554), in which EPA suggested that changes to lists of substances under statutes incorporated in the CERCLA definition of a hazardous substance (CERCLA section 101(14)) would be reflected simultaneously on the CERCLA list of hazardous substances in Table 302.4 at 40 CFR 302.4. In the April 4, 1985 final rule (50 FR 13456), however, EPA modified this previous policy by providing that all hazardous substances in Table 302.4 are also designated under CERCLA section 102(a) (see 40 CFR 302.4(a)). Thus, even if substances are removed from lists under other statutes referred to in CERCLA section 101(14), these substances may remain in Table 302.4 by virtue of their designation under CERCLA section 102(a). Because of the CERCLA section 102(a) designation reflected in 40 CFR 302.4(a), the Agency does not believe that changes to lists of substances under statutes listed in CERCLA section 101(14) necessarily require simultaneous changes to Table 302.4.

III. Changes to List of Hazardous Substances and Their RQs

To show more clearly the two types of changes to the list of CERCLA hazardous substances resulting from the addition of the CAA Amendments hazardous air pollutants and the RCRA hazardous wastes, EPA proposed in the October 22, 1993 NPRM, and is promulgating in today's final rule two sets of revisions to Table 302.4 of 40 CFR 302.4. One set of revisions contains the new listings for the CAA Amendments hazardous air pollutants (including the revised cresols and xylenes entries) and the RCRA hazardous wastes, including final RQs for these substances. The other set of revisions adds a new statutory source code for certain hazardous substances that were already on the CERCLA list (e.g., acetaldehyde and acetonitrile) to indicate that, as a result of their listing as hazardous air pollutants in the CAA Amendments, an additional statutory source for designation of these hazardous substances is CAA section 112.

IV. Changes to 40 CFR Parts 355 and 117

Appendices A and B of 40 CFR part 355, which list extremely hazardous substances (EHSs) and their threshold planning quantities (TPQs) under EPCRA, also show the RQs for EHSs. Five of the new CAA hazardous air pollutants whose RQs are adjusted today are also EHSs. These substances are chloroacetic acid, hydroquinone, beta-propiolactone, titanium tetrachloride, and o-cresol. This rule promulgates 100-pound RQ adjustments for chloroacetic acid, hydroquinone, and o-cresol, a 10-pound RQ adjustment for beta-propiolactone, and a 1,000-pound RQ adjustment for titanium tetrachloride. Therefore, to reflect fully the RQ adjustments for these five substances, EPA today is revising Appendices A and B of 40 CFR part 355 to include these new adjusted RQs.

EPA also is amending the RQs for ''cresol'' and ''xylene (mixed)'' in Table 117.3 of 40 CFR part 117 to be consistent with the CERCLA RQs. Table 117.3, the list of CWA hazardous substances and their RQs, currently contains listings for ''cresol'' and ''xylene (mixed),'' each with an RQ of 1,000 pounds. ''Cresol'' and ''xylene (mixed)'' are included in Table 117.3 because they were originally listed as hazardous substances under CWA section 311(b)(4).

V. Regulatory Analyses

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. An economic analysis performed by EPA [31] shows that this

[30] CAA section 112(b)(3)(C) requires delisting of a hazardous air pollutant if EPA finds ''that there is adequate data on the health and environmental effects [of the substance] to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.'' EPA has not yet issued a final determination whether the petition to delist caprolactam meets the CAA delisting criteria.

[31] See the Economic Impact Analysis of Reportable Quantity Adjustments for CAA

final rule will result in a net cost savings of approximately $500,000 annually, and does not result in any of the other effects that define a significant regulatory action. In this final rule, RQs for 44 of the 47 individual hazardous air pollutants and three of the 11 RCRA wastes are raised. In addition, as noted in Section II.C.1 of this preamble, EPA is assigning no RQ level to the five broad generic categories of hazardous air pollutants. The RQs of the cresols and xylenes categories and the five hazardous wastes with RQs based on the RQ for cresols are being lowered from previously adjusted levels. The estimated net effect of these changes will be to reduce by approximately 1,300 the number of reportable releases for these hazardous substances each year (see the economic analysis mentioned above). The estimated $500,000 net cost savings reflects only those effects of the RQ adjustments that are readily quantifiable in dollars and are associated with the release notification requirements under section 103 of CERCLA and section 304 of EPCRA (including the associated activities of recordkeeping, notification processing, monitoring, and response).

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 impact on a substantial number of small entities.'' If this criterion is met, the Agency must conduct a Regulatory Flexibility Analysis to examine ways its regulation could be modified to mitigate these adverse impacts. A Regulatory Flexibility Analysis is not necessary for this final rule, because the upper-bound total cost of compliance to small firms is negligible.[32] In fact, as noted in Section V.A. of today's preamble, the Agency anticipates that raising most of the statutory one-pound RQs for the hazardous air pollutants, as well as assigning no RQ to the five CAA categories in this rule, will result in a net cost savings. Therefore, EPA hereby certifies that today's final rule is not likely to have a significant impact on a substantial number of small entities. As a result, no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and have been assigned OMB control number 2050–0046. The public reporting burden for the collection of information pursuant to CERCLA section 103 is estimated to take, on average, 4.1 hours per response. This estimate includes the determination whether a release requires a report to the National Response Center, the time required to make the call, and the time required to maintain a log of any calls made to government organizations.

Because the RQs for almost all of the substances included in today's final rule are being raised, the net reporting and recordkeeping burden associated with reporting releases of these substances under CERCLA section 103 is expected to decrease. As noted in the economic impact analysis supporting today's final rule, EPA estimates that the annual reporting and recordkeeping burdens associated with reports to the National Response Center will be reduced by more than 5,300 hours as a result of these RQ adjustments.

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, Mail Code 2136, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.''

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule in which the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under section 205 of this Act, EPA must select the most cost-effective and least-burdensome alternative that achieves the objective of the rule and that is consistent with statutory requirements. Section 203 of the Act requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has determined that this final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects

40 CFR Part 117

Environmental protection, Hazardous substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 302

Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 355

Air pollution control, Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Disaster assistance, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Natural resources, Penalties, Reportable quantity, Reporting and recordkeeping requirements, Superfund Amendments and Reauthorization Act, Threshold planning quantity, Water pollution control, Water supply.

Dated: May 23, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

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

Authority: Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), (''the Act'') and Executive Order 11735, superseded by Executive Order 12777, 56 FR 54757.

2. Section 117.3 is amended by revising the entries in the ''category'' column and in the ''RQ in pounds (kilograms)'' column for ''cresol'' and ''xylene (mixed)'' in Table 117.3 from

Hazardous Air Pollutants and RCRA Hazardous Wastes, Volume VI, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

[32] See the Regulatory Impact Analysis of Reportable Quantity Adjustments Under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, Volume I, March 1985, available for inspection at the CERCLA Docket Office, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202.

''C'' to ''B'' and from ''1,000 (454)'' to ''100 (45.4),'' respectively, as set forth below:

§ 117.3 Determination of Reportable Quantities.

* * * * *

TABLE 117.3.—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT

* * * * *

Material	Category	RQ in pounds (kilograms)
* *	* *	*
Cresol	B	100 (45.4)
* *	* *	*
Xylene (mixed).	B	100 (45.4)
* *	* *	*

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

3. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, 9604; 33 U.S.C. 1321 and 1361.

4. Section 302.4 is amended by adding the following new entries to Table 302.4 and its Appendix A, and by adding footnotes ''a'' and ''b'' to Table 302.4 as set forth below:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
Acetamide	60355		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
4-Aminobiophenyl	92671		1*	3		X	1 (0.454)
*	*	*	*	*		*	*
o-Anisidine	90040		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
Benzene [a]							(*)
*	*	*	*	*		*	*
Benzene, dimethyl-	1330207	Xylene, Xylene (mixed), Xylenes (isomers and mixture).	1000	1,3,4	U239	B	100 (45.4)
Benzene,m-dimethyl-	108383	m-Xylene	1*	3		C	1000 (454)
Benzene, o-dimethyl-	95476	o-Xylene	1*	3		C	1000 (454)
Benzene, p-dimethyl-	106423	p-Xylene	1*	3		B	100 (45.4)
*	*	*	*	*		*	*
Biphenyl	92524		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
1,3-Butadiene	106990		1*	3		A	10 (4.54)
*	*	*	*	*		*	*
Calcium cyanamide	156627		1*	3		C	1000 (454)
*	*	*	*	*		*	*
Caprolactam	105602		1*	3		D	5000 (2270)
*	*	*	*	*		*	*
Carbonyl sulfide	463581		1*	3		B	100 (45.4)
Catechol	120809		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
Chloramben	133904		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
Chloroacetic acid	79118		1*	3		B	100 (45.4)
2-Chloroacetophenone	532274		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
Chloroprene	126998		1*	3		B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
Cobalt compounds	N.A.		1*	3			(**)
*	*	*	*	*		*	*
Cresols (isomers and mixture).	1319773	Cresylic acid (isomers and mixture) Phenol, methyl.	1000	1,3,4	U052	B	100 (45.4)
m-Cresol	108394	m-Cresylic acid	1*	3		B	100 (45.4)
o-Cresol	95487	o-Cresylic acid	1*	3		B	100 (45.4)
p-Cresol	106445	p-Cresylic acid	1*	3		B	100 (45.4)
Cresylic acid (isomers and mixture).	1319773	Cresols (isomers and mixture) Phenol, methyl.	1000	1,3,4	U052	B	100 (45.4)
m-Cresylic acid	108394	m-Cresol	1*	3		B	100 (45.4)
o-Cresylic acid	95487	o-Cresol	1*	3		B	100 (45.4)
p-Cresylic acid	106445	p-Cresol	1*	3		B	100 (45.4)
*	*	*	*	*		*	*
DDET [b]	3547044		1*	3		D	5000 (2270)
*	*	*	*	*		*	*
Diazomethane	334883		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
Dibenzofuran	132649		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
Diethanolamine	111422		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
N,N-Diethylaniline	91667		1*	3		C	1000 (454)
*	*	*	*	*		*	*
Diethyl sulfate	64675		1*	3		A	10 (4.54)
*	*	*	*	*		*	*
N,N-Dimethylaniline	121697		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
Dimethylformamide	68122		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
1,2-Epoxybutane	106887		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
Ethylene glycol	107211		1*	3		D	5000 (2270)
*	*	*	*	*		*	*
Fine mineral fibers [c]	N.A.		1*	3			(**)
*	*	*	*	*		*	*
Glycol ethers [d]	N.A.		1*	3			(**)
*	*	*	*	*		*	*
Hexamethylene-1,6-diisocyanate.	822060		1*	3		B	100 (45.4)
Hexamethylphosphoramide.	680319		1*	3		X	1 (0.454)
Hexane	110543		1*	3		D	5000 (2270)
*	*	*	*	*		*	*
Hydroquinone	123319		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
Manganese Compounds	N.A.		1*	3			(**)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
MDI	101688	Methylene diphenyl diisocyanate.	1*	3		D	5000 (2270)
*	*	*	*	*		*	*
4,4'-Methylenedianiline	101779		1*	3		A	10 (4.54)
Methylene diphenyl diisocyanate.	101688	MDI	1*	3		D	5000 (2270)
*	*	*	*	*		*	*
Methyl tert-butyl ether	1634044		1*	3		C	1000 (454)
*	*	*	*	*		*	*
4-Nitrobiphenyl	92933		1*	3		A	10 (4.54)
*	*	*	*	*		*	*
N–Nitrosomorpholine	59892		1*	3		X	1 (0.454)
*	*	*	*	*		*	*
Phenol, methyl-	1319773	Cresols (isomers and mixture) Cresylic acid (isomers and mixture).	1000	1,3,4	U052	B	100 (45.4)
*	*	*	*	*		*	*
p-Phenylenediamine	106503		1*	3		D	5000 (2270)
*	*	*	*	*		*	*
Polycyclic Organic Matter [e].	N.A.		1*	3			(**)
*	*	*	*	*		*	*
beta-Propiolactone	57578		1*	3		A	10 (4.54)
*	*	*	*	*		*	*
Propionaldehyde	123386		1*	3		C	1000 (454)
*	*	*	*	*		*	*
Propoxur (Baygon)	114261		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
Styrene oxide	96093		1*	3		B	100 (45.4)
*	*	*	*	*		*	*
Titanium tetrachloride	7550450		1*	3		C	1000 (454)
*	*	*	*	*		*	*
Trifluralin	1582098		1*	3		A	10 (4.54)
*	*	*	*	*		*	*
2,2,4-Trimethylpentane	540841		1*	3		C	1000 (454)
*	*	*	*	*		*	*
Unlisted Hazardous Wastes Characteristics:.	N.A.		1*	4			
Characteristics of Toxicity:							
*	*	*	*	*		*	*
o-Cresol (D023)	N.A.		1*	4	D023	B	100 (45.4)
m-Cresol (D024)	N.A.		1*	4	D024	B	100 (45.4)
p-Cresol (D025)	N.A.		1*	4	D025	B	100 (45.4)
Cresol (D026)	N.A.		1*	4	D026	B	100 (45.4)
*	*	*	*	*		*	*
Vinyl bromide	593602		1*	3		B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
Xylene	1330207	Benzene, dimethyl-Xylene (mixed), Xylenes (isomers and mixture).	1000	1,3,4	U239	B	100 (45.4)
m-Xylene	108383	Benzene, m-dimethyl-	1*	3		C	1000 (454)
o-Xylene	95476	Benzene, o-dimethyl-	1*	3		C	1000 (454)
p-Xylene	106423	Benzene, p-dimethyl-	1*	3		B	100 (45.4)
Xylene (mixed)	1330207	Benzene, dimethyl-Xylene Xylenes (isomers and mixture).	1000	1,3,4	U239	B	100 (45.4)
Xylenes (isomers and mixture).	1330207	Benzene, dimethyl-Xylene Xylene (mixed).	1000	1,3,4	U239	B	100 (45.4)
F004			1*	4	F004	B	100(45.4)
The following spent nonhalogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Cresols/Cresylic acid.	1319773		1000	1,3,4	U052	B	100(45.4)
(b) Nitrobenzene	98953		1000	1,2,4	U169	C	1000(454)
*	*	*	*	*		*	*
F025			1*	4	F025	X	1(0.454)
Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution							
*	*	*	*	*		*	*
F037			1*	4	F037	X	1(0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing F038	.....	.....	1*	4	F038	X	1(0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Petroleum refinery secondary (emulsified) oil/water/solids separation sludge—Any sludge and/or float generated from the physical and/or chemical separation of oil/watersolids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units; tanks and impoundments, and all sludges generated in DAFunits. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from once-through non-contact cooling waters segregated for treatment from other process or oil cooling wastes, sludges and floats generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing							
*	*	*	*	*		*	*
K088 Spent potliners from primary aluminum reduction			1*	4	K088	A	10 (4.54)
K090 Emission control dust or sludge from ferrochromiumsilicon production			1*	4	K090	A	10 (4.54)
K091 Emission control dust or sludge from ferrochromium production			1*	4	K091	A	10 (4.54)
*	*	*	*	*		*	*

†Indicates the staturory source as defined by 1, 2, 3, and 4 below.

* * * * * * *

1- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 311(b)(4).

2- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 307(a).

3- Indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA section 112.
4- Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
1* Indicates that 1-pound RQ is CERCLA is statutory RQ.
* * * * * * *
** Indicates that no RQ is being assigned to the generic or broad class.
[a] Benzene was already a CERCLA hazardous substance prior to the CAA Amendments of 1990 and received an adjusted 10-pound RQ based on potential carcinogenicity in an August 14, 1989, final rule (54 FR 33418). The CAA Amendments specify that ''benzene (including benzene from gasoline)'' is a hazardous air pollutant and , thus, a CERCLA hazardous substance.
[b] The CAA Amendments of 1990 list DDE (3547–04–4) as a CAA hazardous air pollutant. The CAS number, 3547–04–4, is for the chemical, p,p'-dichlorodiphenylethane. DDE or p,p'-dichlorodiphenyldichloroethylene, CAS number 72–55–9, is already listed in Table 302.4 with a final RQ of 1 pound. The substance identified by the CAS number 3547–04–4 has been evaluated and listed as DDE to be consistent with the CAA seciton 112 listing, as amended.
[c] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.
[d] Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-$(OCH2CH2)_n$-OR' where
n=1, 2, or 3
R=alkyl or aryl groups
R'=R, H, or groups which, when removed, yield glycol ethers with the structure: R-$(OCH2CH2)_n$OH. Polymers are excluded from the glycol category.
[e] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100 °C.

5. Section 302.4 is also amended by revising the following existing entries in Table 302.4 to add note ''3'' to the statutory code column and to add the following regulatory synonyms as set forth below. In addition, Appendix A to Table 302.4 is amended by revising the following entries as set forth below:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Acetaldehyde	75070	Ethanal	1000	1,3,4	U001	C	1000 (454)
*	*	*	*	*		*	*
Acetamide, N-9H-fluoren-2-yl-.	53963	2-Acetylaminofluorene	1*	3,4	U005	X	1 (0.454)
*	*	*	*	*		*	*
Acetic acid (2,4-dichlorophenoxy)-, salts & esters.	94757	2,4-D Acid, 2,4-D,salts and esters	100	1,3,4	U240	B	100 (45.4)
*	*	*	*	*		*	*
Acetonitrile	75058		1*	3,4	U003	D	5000 (2270)
Acetophenone	98862	Ethanone, 1-phenyl-	1*	3,4	U004	D	5000 (2270)
2-Acetylaminofluorene	53963	Acetamide, N-9H-fluoren-2-yl-.	1*	3,4	U005	X	1 (0.454)
*	*	*	*	*		*	*
Acrolein	107028	2-Propenal	1	1,2,3,4	P003	X	1 (0.454)
Acrylamide	79061	2-Propenamide	1*	3,4	U007	D	5000 (2270)
Acrylic acid	79107	2-Propenoic acid	1*	3,4	U008	D	5000 (2270)
Acrylonitrile	107131	2-Propenenitrile	100	1,2,3,4	U009	B	100 (45.4)
*	*	*	*	*		*	*
Allyl chloride	107051		1000	1,3		C	1000 (454)
*	*	*	*	*		*	*
Aniline	62533	Benzenamine	1000	1,3,4	U012	D	5000 (2270)
*	*	*	*	*		*	*
ANTIMONY AND COMPOUNDS.	N.A.	Antimony Compounds	1*	2,3			**
Antimony Compounds	N.A.	ANTIMONY AND COMPOUNDS.	1*	2,3			**
*	*	*	*	*		*	*
Aroclor 1016	12674112	Aroclors PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Aroclor 1221	11104282	Aroclors PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclor 1232	11141165	 PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclor 1242	53469219	Aroclors PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclor 1248	12672296	Aroclors PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclor 1254	11097691	Aroclors PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclor 1260	11096825	Aroclors PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclors	1336363	PCBs POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclor 1016	12674112		10	1,2,3		X	1 (0.454)
Aroclor 1221	11104282		10	1,2,3		X	1 (0.454)
Aroclor 1232	11141165		10	1,2,3		X	1 (0.454)
Aroclor 1242	53469219		10	1,2,3		X	1 (0.454)
Aroclor 1248	12672296		10	1,2,3		X	1 (0.454)
Aroclor 1254	11097691		10	1,2,3		X	1 (0.454)
Aroclor 1260	11096825		10	1,2,3		X	1 (0.454)
*	*	*	*	*		*	*
ARSENIC AND COMPOUNDS.	N.A.	Arsenic Compounds (inorganic including arsine).	1*	2,3			**
Arsenic Compounds (inorganic including arsine).	N.A.	ARSENIC AND COMPOUNDS.	1*	2,3			**
*	*	*	*	*		*	*
Aziridine	151564	Ethyleneimine	1*	3,4	P054	X	1 (0.454)
Aziridine, 2-methyl-	75558	2-Methyl aziridine 1,2-Propylenemine.	1*	3,4	P067	X	1 (0.454)
*	*	*	*	*		*	*
Benzenamine	62533	Aniline	1000	1,3,4	U012	D	5000 (2270)
*	*	*	*	*		*	*
Benzenamine, N,N-dimethyl-4-(phenylazo-).	60117	Dimethyl aminoazobenzene.	1*	3,4	U093	A	10 (4.54)
Benzenamine, 2-methyl-	95534	o-Toluidine	1*	3,4	U328	B	100 (45.4)
*	*	*	*	*		*	*
Benzenamine, 4,4′-methylenebis(2-chloro-.	101144	4,4′-Methylenebis(2-chloroaniline).	1*	3,4	U158	A	10 (4.54)
*	*	*	*	*		*	*
Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester.	510156	Chlorobenzilate	1*	3,4	U038	A	10 (4.54)
*	*	*	*	*		*	*
Benzene, chloro-	108907	Chlorobenzene	100	1,2,3,4	U037	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
Benzene, chloromethyl- ..	100447	Benzyl chloride	100	1,3,4	P028	B	100 (45.4)
Benzenediamine, ar-methyl-.	95807	Toluenediamine	1*	3,4	U221	A	10 (4.54)
	496720	2,4-Toluene diamine	.....	.....			.....
	823405	.....	.....	.....			.....
	25376458	.....	.....	.....			.....
1,2-Benzenedicarboxylic acid, dibutyl ester.	84742	n-Butyl phthalate ..... Dibutyl phthalate Di-n-butyl phthalate	100	1,2,3,4	U069	A	10 (4.54)
1,2-Benzenedicarboxylic acid, dimethyl ester.	131113	Dimethyl phthalate	1*	2,3,4	U102	D	5000 (2270)
*	*	*	*	*		*	*
1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester.	117817	Bis(2-ethylhexyl)phthalate. DEHP Diethylhexyl phthalate	1*	2,3,4	U028	B	100 (45.4)
*	*	*	*	*		*	*
Benzene, 1,4-dichloro- ...	106467	p-Dichlorobenzene 1,4-Dichlorobenzene	100	1,2,3,4	U072	B	100 (45.4)
*	*	*	*	*		*	*
Benzene, 1,3-diisocyanatomethyl-.	91087	Toluene diisocyanate	1*	3,4	U223	B	100 (45.4)
	584849	2,4-Toluene diisocyanate	.....	.....			.....
	26471625	.....	.....	.....			.....
*	*	*	*	*		*	*
Benzene, hexachloro-	118741	Hexachlorobenzene	1*	2,3,4	U127	A	10 (4.54)
*	*	*	*	*		*	*
Benzene, hydroxy-	108952	Phenol	1000	1,2,3,4	U188	C	1000 (454)
Benzene, methyl-	108883	Toluene	1000	1,2,3,4	U220	C	1000 (454)
Benzene, 1-methyl-2,4-dinitro-.	121142	2,4-Dinitrotoluene	1000	1,2,3,4	U105	A	10 (4.54)
*	*	*	*	*		*	*
Benzene, (1-methylethyl)-	98828	Cumene	1*	3,4	U055	D	5000 (2270)
Benzene, nitro-	98953	Nitrobenzene	1000	1,2,3,4	U169	C	1000 (454)
*	*	*	*	*		*	*
Benzene, pentachloronitro-.	82688	PCNB ..... Pentachloronitrobenzene Quintobenzene	1*	3,4	U185	B	100 (45.4)
*	*	*	*	*		*	*
Benzene, 1,1'-(2,2,2-trichloroethylidene) bis[4-methoxy-.	72435	Methoxychlor	1	1,3,4	U247	X	1 (0.454)
Benzene, (trichloromethyl)-.	98077	Benzotrichloride	1*	3,4	U023	A	10 (4.54)
*	*	*	*	*		*	*
Benzidine	92875	[1,1'-Biphenyl]-4,4'-diamine.	1*	2,3,4	U021	X	1 (0.454)
*	*	*	*	*		*	*
ρ-Benzoquinone	106514	2,5-Cyclohexadiene-1,4-dione Quinone.	1*	3,4	U197	A	10 (4.54)
*	*	*	*	*		*	*
Benzotrichloride	98077	Benzene, (trichloromethyl)-.	1*	3,4	U023	A	10 (4.54)
*	*	*	*	*		*	*
Benzyl chloride	100447	Benzene, chloromethyl- .	100	1,3,4	P028	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
BERYLLIUM AND COMPOUNDS.	N.A.	Beryllium Compounds	1*	2,3			(**)
Beryllium Compounds	N.A.	BERYLLIUM AND COMPOUNDS.	1*	2,3			(**)
*	*	*	*	*		*	*
γ-BHC	58899	Cyclohexane, 1,2,3,4,5,6-hexa chloro- (1α, 2α, 3β,4α,5α,6β)-.	1	1,2,3,4	U129	X	1 (0.454)
*	*	*	*	*		*	*
2-Butanone	78933	MEK	1*	3,4	U159	D	5000 (2270)
η-Butyl phthalate	84742	1,2-Benzenedicarboxylic acid, dibutyl ester. Dibutyl phthalate Di-n-butyl phthalate	100	1,2,3,4	U069	A	10 (4.54)
*	*	*	*	*		*	*
CADMIUM AND COMPOUNDS.	N.A.	Cadmium Compounds ...	1*	2,3			(**)
Cadmium Compounds	N.A.	CADMIUM AND COMPOUNDS.	1*	2,3			(**)
*	*	*	*	*		*	*
Camphene, octachloro- ..	8001352	Chlorinated camphene Toxaphene.	1	1,2,3,4	P123	X	1 (0.454)
*	*	*	*	*		*	*
Captan	133062	.....	10	1,3		A	10 (4.54)
*	*	*	*	*		*	*
Carbamic acid, ethyl ester.	51796	Ethyl carbamate Urethane.	1*	3,4	U238	B	100 (45.4)
*	*	*	*	*		*	*
Carbamic chloride, dimethyl-.	79447	Dimethylcarbamoyl chloride.	1*	3,4	U097	X	1 (0.454)
*	*	*	*	*		*	*
Carbaryl	63252	.....	100	1,3		B	100 (45.4)
*	*	*	*	*		*	*
Carbon disulfide	75150	.....	5000	1,3,4	P022	B	100 (45.4)
*	*	*	*	*		*	*
Carbonic dichloride	75445	Phosgene	5000	1,3,4	P095	A	10 (4.54)
*	*	*	*	*		*	*
Carbon tetrachloride	56235	Methane, tetrachloro-	5000	1,2,3,4	U211	A	10 (4.54)
*	*	*	*	*		*	*
Chlordane	57749	Chlordane, alpha & gamma isomers. CHLORDANE (TECHNICAL MIXTURE AND METABOLITES) 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-.	1	1,2,3,4	U036	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
Chlordane, alpha & gamma isomers.	57749	Chlordane ..... CHLORDANE (TECHNICAL MIXTURE AND METABOLITES) l4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-.	1	1,2,3,4	U036	X	1 (0.454)
CHLORDANE (TECHNICAL MIXTURE AND METABOLITES).	57749	Chlordane, alpha & gamma isomers. Chlordane, alpha & gamma isomers 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	1	1,2,3,4	U036	X	1 (0.454)
*	*	*	*	*		*	*
Chlorinated camphene ...	8001352	Camphene, octachloro- Toxaphene.	1	1,2,3,4	P123	X	1 (0.454)
*	*	*	*	*		*	*
Chlorine	7782505	.....	10	1,3		A	10 (4.54)
*	*	*	*	*		*	*
Chlorobenzene	108907	Benzene, chloro-	100	1,2,3,4	U037	B	100 (45.4)
*	*	*	*	*		*	*
Chlorobenzilate	510156	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester.	1*	3,4	U038	A	10 (4.54)
*	*	*	*	*		*	*
1-Chloro-2,3-epoxypropane.	106898	Epichlorohydrin Oxirane, (chloromethyl)-.	1000	1,3,4	U041	B	100 (45.4)
Chloroethane	75003	Ethyl chloride	1*	2,3		B	100 (45.4)
*	*	*	*	*		*	*
Chloroform	67663	Methane, trichloro-	5000	1,2,3,4	U044	A	10 (4.54)
Chloromethane	74873	Methane, chloro-Methyl chloride.	1*	2,3,4	U045	B	100 (45.4)
Chloromethyl methyl ether.	107302	Methane, chloromethoxy-.	1*	3,4	U046	A	10 (4.54)
*	*	*	*	*		*	*
CHROMIUM AND COMPOUNDS.	N.A.	Chromium Compounds ..	1*	2,3			(**)
Chromium Compounds ...	N.A.	CHROMIUM AND COMPOUNDS.	1*	2,3			(**)
*	*	*	*	*		*	*
Cumene	98828	Benzene, (1-methylethyl)-.	1*	3,4	U055	D	5000 (2270)
*	*	*	*	*		*	*
Cyanide Compounds	N.A.	CYANIDES	1*	2,3			(**)
CYANIDES	N.A.	Cyanide Compounds	1*	2,3			(**)
*	*	*	*	*		*	*
2,5-Cyclohexadiene-1,4-dione.	106514	p-Benzoquinone Quinone.	1*	3,4	U197	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5α,6β)-.	58899	γ-BHC Hexachlorocyclohexane (gamma isomer) Lindane Lindane (all isomers).	1	1,2,3,4	U129	X	1 (0.454)
*	*	*	*	*		*	*
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-.	77474	Hexachlorocyclopentadiene.	1	1,2,3,4	U130	A	10 (4.54)
*	*	*	*	*		*	*
2,4-D Acid	94757	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters. 2,4-D, salts and esters	100	1,3,4	U240	B	100 (45.4)
*	*	*	*	*		*	*
2,4-D salts and esters	94757	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters. 2,4-D Acid	100	1,3,4	U240	B	100 (45.4)
*	*	*	*	*		*	*
DDE	72559	4,4′-DDE	1*	2,3		X	1 (0.454)
4,4′-DDE	72559	DDE	1*	2,3		X	1 (0.454)
*	*	*	*	*		*	*
DEHP	117817	1,2-Benzenedicarboxylic acid, bis(2-ethyl-hexyl) ester. Bis(2-ethylhexyl)phthalate Diethylhexyl phthalate	1*	2,3,4	U028	B	100 (45.4)
*	*	*	*	*		*	*
1,2-Dibromo-3-chloropropane.	96128	Propane, 1,2-dibromo-3-chloro-.	1*	3,4	U066	X	1 (0.454)
Dibromoethane	106934	Ethane, 1,2-dibromo- Ethylene dibromide.	1000	1,3,4	U067	X	1 (0.454)
*	*	*	*	*		*	*
Dibutyl phthalate	84742	1,2-Benzenedicarboxylic acid, dibutyl ester. n-Butyl phthalate Di-n-butyl phthalate	100	1,2,3,4	U069	A	10 (4.54)
Di-n-butyl phthalate	84742	1,2-Benzenedicarboxylic acid, dibutyl ester. n-Butyl phthalate Dibutyl phthalate	100	1,2,3,4	U069	A	10 (4.54)
*	*	*	*	*		*	*
1,4-Dichlorobenzene	106467	Benzene, 1,4-dichloro- p-Dichlorobenzene	100	1,2,3,4	U072	B	100 (45.4)
*	*	*	*	*		*	*
p-Dichlorobenzene	106467	Benzene, 1,4-dichloro- 1,4-Dichlorobenzene	100	1,2,3,4	U072	B	100 (45.4)
*	*	*	*	*		*	*
3,3′-Dichlorobenzidine	91941	[1,1′-Biphenyl]-4,4′-diamine,3,3′-dichloro-.	1*	2,3,4	U073	X	1 (0.454)
*	*	*	*	*		*	*
1,1-Dichloroethane	75343	Ethane, 1,1-dichloro- Ethylidene dichloride	1*	2,3,4	U076	C	1000 (454)
1,2-Dichloroethane	107062	Ethane, 1,2-dichloro- Ethylene dichloride	5000	1,2,3,4	U077	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
1,1-Dichloroethylene	75354	Ethene, 1,1-dichloro- Vinylidene chloride	5000	1,2,3,4	U078	B	100 (45.4)
Dichloroethyl ether	111444	Bis(2-chloroethyl) ether Ethane, 1,1′-oxybis[2-chloro-	1*	2,3,4	U025	A	10 (4.54)
*	*	*	*	*		*	*
Dichloromethyl ether	542881	Bis(chloromethyl) ether Methane, oxybis(chloro-	1	3,4	P016	A	10 (4.54)
*	*	*	*	*		*	*
Dichloromethane	75092	Methane, dichoro- Methylene chloride	1	2,3,4	U080	C	1000 (454)
*	*	*	*	*		*	*
1,2-Dichloropropane	78875	Propane, 1,2-dichloro- Propylene dichloride	5000	1,2,3,4,	U083	C	1000 (454)
*	*	*	*	*		*	*
1,3-Dichloropropane	542756	1-Propene, 1,3-dichloro-	5000	1,2,3,4	U084	B	100 (45.4)
*	*	*	*	*		*	*
Dichlorvos	62737		10	1,3		A	10 (4.54)
*	*	*	*	*		*	*
1,4-Diethyleneoxide	123911	1,4-Dioxane 1,4-Diethylenedioxide	1	3,4	U108	B	100 (45.4)
*	*	*	*	*		*	*
1,4-Diethylenedioxide	123911	1,4-Dioxane 1,4-Diethyleneoxide	1	3,4	U108	B	100 (45.4)
*	*	*	*	*		*	*
Diethylhexyl phthalate	117817	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester. Bis(2-ethylhexyl)phthalate DEHP	1	2,3,4	U028	B	100 (45.4)
*	*	*	*	*		*	*
3,3′-Dimethoxybenzidine	119904	[1,1′-Biphenyl]-4,4′-diamine,3,3′-dimethoxy-.	1	3,4	U091	B	100 (45.4)
*	*	*	*	*		*	*
Dimethyl aminoazobenzene.	60117	Benzenamine, N,N-dimethyl-4-(phenylazo-). P-Dimethylaminoazobenzene	1	3,4	U093	A	10 (4.54)
*	*	*	*	*		*	*
p-Dimethylaminoazobenzene.	60117	Benzenamine, N,N-dimethyl-4-(phenylazo-). Dimethyl aminoazobenzene	1	3,4	U093	A	10 (4.54)
*	*	*	*	*		*	*
3,3′-Dimethylbenzidine	119937	[1,1′-Biphenyl]-4,4′-diamine,3,3′-dimethyl-.	1	3,4	U095	A	10 (4.54)
*	*	*	*	*		*	*
Dimethylcarbamoyl chloride.	79447	Carbamic chloride, dimethyl-.	1	3,4	U097	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
1,1-Dimethylhydrazine	57147	Hydrazine, 1,1-dimethyl-	1	3,4	U098	A	10 (4.54)
*	*	*	*	*		*	*
Dimethyl phthalate	131113	1,2-Benzenedicarboxylic acid, dimethyl ester.	1	2,3,4	U102	D	5000 (2270)
*	*	*	*	*		*	*
Dimethyl sulfate	77781	Sulfuric acid, dimethyl ester.	1	3,4	U103	B	100 (45.4)
*	*	*	*	*		*	*
4,6-Dinitro-o-cresol, and salts.	534521	Phenol, 2-methyl-4,6-dinitro-, & salts.	1	2,3,4	P047	A	10 (4.54)
*	*	*	*	*		*	*
2,4-Dinitrophenol	51285	Phenol, 2,4-dinitro-	1000	1,2,3,4,	P048	A	10 (4.54)
*	*	*	*	*		*	*
2,4-Dinitrotoluene	121142	Benzene, 1-methyl-2,4-dinitro-.	1000	1,2,3,4	U105	A	10 (4.54)
*	*	*	*	*		*	*
1,4-Dioxane	123911	1,4-Diethyleneoxide 1,4-Diethlyenedioxide	1	3,4	U108	B	100 (45.4)
1,2-Diphenyl- ..... hydrazine	122667	Hydrazine, 1,2-diphenyl-	1*	2,3,4	U109	A	10(4.54)
*	*	*	*	*		*	
Epichlorohydrin	106898	1-Chloro-2,3-epoxypropane. Oxirane, (chloromethyl)-	1000	1,3,4	U041	B	100(45.4)
*	*	*	*	*		*	
Ethanal	75070	Acetaldehyde	1000	1,3,4	U001	C	1000(454)
*	*	*	*	*		*	
Ethane, 1,2-dibromo	106934	Dibromoethane ..... Ethylene dibromide	1000	1,3,4	U067	X	1(0.454)
Ethane, 1,1-dichloro	75343	1,1-Dichloroethane ..... Ethylidene dichloride	1*	2,3,4	U076	C	1000(454)
Ethane, 1,2-dichloro	107062	1,2-Dichloroethane ..... Ethylene dichloride	5000	1,2,3,4	U077	B	100(45.4)
*	*	*	*	*		*	
Ethane, hexachloro-	67721	Hexachloroethane	1*	2,3,4	U131	B	100(45.4)
*	*	*	*	*		*	
Ethane, 1,1'-oxybis[2-chloro-.	111444	Bis(2-chloroethyl) ether .. Dichloroethyl ether	1*	2,3,4	U025	A	10(4.54)
*	*	*	*	*		*	
Ethane, 1,1,2,2-tetrachloro-.	79345	1,1,2,2-Tetra- ..... chloroethane	1*	2,3,4	U209	B	100(45.4)
*	*	*	*	*		*	
Ethane, 1,1,1-trichloro- ...	71556	Methyl chloroform 1,1,1-Trichloroethane	1*	2,3,4	U226	C	1000(454)
Ehane, 1,1,2-trichloro-	79005	1,1,2-Trichloroethane	1*	2,3,4	U227	B	100(45.4)
*	*	*	*	*		*	
Ethanone, 1-phenyl-	98862	Acetophenone	1*	3,4	U004	D	5000(2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*		*	*	
Ethene, 1,1-dichloro-	75354	1,1-Dichloroethylene Vinylidene chloride	5000	1,2,3,4	U078	B	100(45.4)
*	*	*	*		*	*	
Ethene, tetrachloro-	127184	Perchloroethylene Tetrachloroethene Tetrachloroethylene	1*	2,3,4	U210	B	100(45.4)
Ethene, trichloro-	79016	Trichloroethene Trichloroethylene	1000	1,2,3,4	U228	B	100(45.4)
Ethyl acrylate	140885	2-Propenoic acid, ethyl ester.	1*	3,4	U113	C	1000(454)
Ethylbenzene	100414		1000	1,2,3		C	1000(454)
Ethyl carbamate	51796	Carbamic acid, ethyl ester. Urethane	1*	3,4	U238	B	100(45.4)
Ethyl chloride	75003	Chloroethane	1*	2,3		B	100(45.4)
*	*	*	*		*	*	
Ethylene dibromide	106934	Dibromoethane Ethane, 1,2-dibromo-	1000	1,3,4	U067	X	1(0.454)
Ethylene dichloride	107062	1,2-Dichloroethane Ethane, 1,2-dichloro-	5000	1,2,3,4	U077	B	100(45.4)
*	*	*	*		*	*	
Ethyleneimine	151564	Aziridine	1*	3,4	P054	X	1(0.454)
Ethylene oxide	75218	Oxirane	1*	3,4	U115	A	10(4.54)
Ethylenethiourea	96457	2-Imidazolidinethione	1*	3,4	U116	A	10(4.54)
*	*	*	*	*	*	*	
Ethylidene dichloride	75343	1,1-Dichloroethane Ethane, 1,1-dichloro-	*	2,3,4	U076	C	1000 (454)
*	*	*	*	*	*	*	
Formaldehyde	50000		1000	1,3,4	U122	B	100 (45.4)
*	*	*	*	*	*	*	
2,5-Furandione	108316	Malleic anhydride	5000	1,3,4	U147	D	5000 (2270)
*	*	*	*	*	*	*	
Heptachlor	76448	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-. heptachloro-3a,4,7,7a-tetrahydro-	1	1,2,3,4	P059	X	1, (0.454)
*	*	*	*	*	*	*	
Hexachlorobenzene	118741	Benzene, hexachloro-	1*	2,3,4	U127	A	10 (4.54)
Hexachlorobutadiene	87683	1,3-Butadiene 1,1,2,3,4,4-hexachloro-.	1*	2,3,4	U128	X	1 (0.454)
*	*	*	*	*	*	*	
Hexachlorocyclohexane (gamma isomer).	58899	γ-BHC Chclohexane, 1,2,3,4,5,6-hexachloro- (1α,2α,3β,4α, 5α,6β)- Lindane Lindane (all isomers)	1	1,2,3,4	U129	X	1 (0.454)
Hexachlorocyclopentadiene.	77474	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-.	1	1,2,3,4	U130	A	10 (4.54)
Hexachloroethane	67721	Ethane, hexachloro-	1*	2,3,4	U131	B	100 (45.4)
*	*	*	*	*	*	*	
Hexone	108101	Methyl isobutyl ketone 4-Methyl-2-pentanone	1*	3,4	U161	D	5000 (2270)
Hydrazine	302012		1*	3,4	U133	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
Hydrazine, 1,1-dimethyl-	57147	1,1-Dimethylhydrazine	1*	3,4	U098	A	10 (4.54)
*	*	*	*	*		*	*
Hydrazine, 1,2-diphenyl-	122667	1,2-Diphenylhydrazine	1*	2,3,4	U109	A	10 (4.54)
*	*	*	*	*		*	*
Hydrazine, methyl-	60344	Methyl hydrazine	1*	3,4	P068	A	10 (4.54)
*	*	*	*	*		*	*
Hydrochloric acid	7647010	Hydrogen chloride	5000	1,3		D	5000 (2270)
*	*	*	*	*		*	*
Hydrofluoric acid	7664393	Hydrogen fluoride	5000	1,3,4	U134	B	100 (45.4)
*	*	*	*	*		*	*
Hydrogen chloride	7647010	Hydrochloric acid	5000	1,3		D	5000 (2270)
*	*	*	*	*		*	*
Hydrogen fluoride	7664393	Hydrofluoric acid	5000	1,3,4	U134	B	100 (45.4)
Hydrogen phosphide	7803512	Phosphine	1*	3,4	P096	B	100 (45.4)
*	*	*	*	*		*	*
2-Imidazolidinethione	96457	Ethylenethiourea	1*	3,4	U116	A	10 (4.54)
*	*	*	*	*		*	*
Iodomethane	74884	Methane, iodo- Methyl iodide	1*	3,4	U138	B	100 (45.4)
1,3-Isobenzofurandione	85449	Phthalic anhydride	1*	3,4	U190	D	5000 (2270)
*	*	*	*	*		*	*
Isophorone	78591		1*	2,3		D	5000 (2270)
*	*	*	*	*		*	*
LEAD AND COMPOUNDS.	N.A.	Lead Compounds	1*	2,3			(*)
Lead Compounds	N.A.	LEAD AND COMPOUNDS.	1*	2,3			(**)
*	*	*	*	*		*	*
Lindane	58899	γ-BHC Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α, 3β,4α,5α,6β)-, Hexachlorocyclohexane (gamma isomer) Lindane (all isomers)	1	1,2,3,4	U129	X	1 (0.454)
Lindane (all isomers)	58899	γ-BHC Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5α,6β)-, Hexachlorocyclohexane (gamma isomer) Lindane	1	1,2,3,4	U129	X	1 (0.454)
*	*	*	*	*		*	*
Maleic anhydride	108316	2,5-Furandione	5000	1,3,4	U147	D	5000 (2270)
*	*	*	*	*		*	*
MEK	78933	2-Butanone Methyl ethyl ketone	1*	3,4	U159	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
MERCURY AND COMPOUNDS.	N.A.	Mercury Compounds	1*	2,3			(**)
Mercury Compounds	N.A.	MERCURY AND COMPOUNDS.	1*	2,3			(**)
*	*	*	*	*		*	*
Methanamine, N-methyl-N-nitroso-.	62759	N-Nitrosodimethylamine .	1*	2,3,4	P082	A	10 (4.54)
Methane, bromo-	74839	Bromomethane ..... Methyl bromide	1*	2,3,4	U029	C	1000 (454)
Methane, chloro-	74873	Chloromethane	1*	2,3,4	U045	B	100 (45.4)
Methane, chloromethoxy-	107302	Chloromethyl methyl ether.	1*	3,4	U046	A	10 (4.54)
*	*	*	*	*		*	*
Methane, dichloro-	75092	Methylene chloride ..... Dichloromethane	1*	2,3,4	U080	C	1000 (454)
*	*	*	*	*		*	*
Methane, iodo-	74884	Iodomethane ..... Methyl iodide	1*	3,4	U138	B	100 (45.4)
*	*	*	*	*		*	*
Methane, oxybis(chloro- .	542881	Bis(chloromethyl)ether ... Dichloromethyl ether	1*	3,4	P016	A	10 (4.54)
*	*	*	*	*		*	*
Methane, tetrachloro-	56235	Carbon tetrachloride	5000	1,2,3,4	U211	A	10 (4.54)
*	*	*	*	*		*	*
Methane, tribromo-	75252	Bromoform	1*	2,3,4	U225	B	100 (45.4)
Methane, trichloro-	67663	Chloroform	5000	1,2,3,4	U044	A	10 (4.54)
*	*	*	*	*		*	*
4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-.	76448	Heptachlor	1*	1,2,3,4	P059	X	1 (0.454)
4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-.	57749	Chlordane ..... Chlordane, alpha & gamma isomers CHLORDANE (TECHNICAL MIXTURE AND METABOLITES)	1	1,2,3,4	U036	X	1 (0.454)
Methanol	67561	Methyl alcohol	1*	3,4	U154	D	5000 (2270)
*	*	*	*	*		*	*
Methoxychlor	72435	Benzene, 1,1′-(2,2,2-trichloroethyl-. idene)bis[4-methoxy-	1	1,3,4	U247	X	1 (0.454)
Methyl alcohol	67561	Methanol	1*	3,4	U154	D	5000 (2270)
2-Methyl aziridine	75558	Aziridine, 2-methyl- 1,2-Propylenimine	1*	3,4	P067	X	1 (0.454)
Methyl brominde	74839	Bromomethane ..... Methane, bromo-	1*	2,3,4	U029	C	1000 (454)
*	*	*	*	*		*	*
Methyl chloride	74873	Chloromethane ..... Methane, chloro-	1*	2,3,4	U045	B	100 (45.4)
*	*	*	*	*		*	*
Methyl chloroform	71556	Ethane, 1,1,1,-trichloro- . 1,1,1-Trichloroethane	1*	2,3,4	U226	C	1000 (454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
4,4′-Methylenebis(2-chloroaniline).	101144	Benzenamine, 4,4′-methylene-bis(2-chloro-.	1*	3,4	U158	A	10 (4.54)
*	*	*	*	*		*	*
Methylene chloride	75092	Dichloromethane Methane, dichloro-	1*	2,3,4	U080	C	1000 (454)
Methyl ethyl ketone	78933	2-Butanone MEK	1*	3,4	U159	D	5000 (2270)
*	*	*	*	*		*	*
Methyl hydrazine	60344	Hydrazine, methyl-	1*	3,4	P068	A	10 (4.54)
Methyl iodide	74884	Iodomethane Methane, iodo-	1*	3,4	U138	B	100 (45.4)
Methyl isobutyl ketone	108101	Hexone 4-Methyl-2-pentanone	1*	3,4	U161	D	5000 (2270)
*	*	*	*	*		*	*
Methyl methacrylate	80626	2-Propenoic acid, 2-methyl-, methyl ester.	5000	1,3,4	U162	C	1000 (454)
*	*	*	*	*		*	*
4-Methyl-2-pentanone	108101	Hexone Methyl isobutyl ketone	1*	3,4	U161	D	5000 (2270)
*	*	*	*	*		*	*
Naphthalene	91203		5000	1,2,3,4	U165	B	100 (45.4)
*	*	*	*	*		*	*
NICKEL AND COMPOUNDS.	N.A.	Nickel Compounds	1*	2,3			(**)
Nickel Compounds	N.A.	NICKEL AND COMPOUNDS.	1*	2,3			(**)
Nitrobenzene	98953	Benzene, nitro-	1000	1,2,3,4	U169	C	1000 (454)
*	*	*	*	*		*	*
p-Nitrophenol	100027	4-Nitrophenol Phenol, 4-nitro-	1000	1,2,3,4	U170	B	100 (45.4)
*	*	*	*	*		*	*
4-Nitrophenol	100027	p-Nitrophenol Phenol, 4-nitro-	1000	1,2,3,4	U170	B	100 (45.4)
*	*	*	*	*		*	*
2-Nitropropane	79469	Propane, 2-nitro	1*	3.4	U171	A	10 (4.54)
*	*	*	*	*		*	*
N-Nitrosodimethylamine	62759	Methanamine, N-methyl-N-nitroso-.	1*	2,3,4	P082	A	10 (4.54)
*	*	*	*	*		*	*
N-Nitroso-N-methylurea	684935	Urea, N-methyl-N-nitroso	1*	3,4	U177	X	1 (0.454)
*	*	*	*	*		*	*
1.2-Oxathiolane, 2,2-dioxide.	1120714	1,3-Propane sultone	1*	3,4	U193	A	10 (4.54)
*	*	*	*	*		*	*
Oxirane	75218	Ethylene oxide	1*	3,4	U115	A	10 (4.54)
*	*	*	*	*		*	*
Oxirane, (chloromethyl)-	106898	1-Chloro-2,3-epoxypropane. Epichlorohydrin	1000	1,3,4	U041	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
Parathion	56382	Phosphorothioic acid, O,O-diethyl O-(4-. nitrophenyl) ester	1	1,3,4	P089	A	10 (4.54)
*	*	*	*	*		*	*
PCBs	1336363	Aroclors POLYCHLORINATED BIPHENYLS	10	1,2,3		X	1 (0.454)
Aroclor 1016	12674112		10	1,2,3		X	1 (0.454)
Aroclor 1221	11104282		10	1,2,3		X	1 (0.454)
Aroclor 1232	11141165		10	1,2,3		X	1 (0.454)
Aroclor 1242	53469219		10	1,2,3		X	1 (0.454)
Aroclor 1248	12672296		10	1,2,3		X	1 (0.454)
Aroclor 1254	11097691		10	1,2,3		X	1 (0.454)
Aroclor 1260	11096825		10	1,2,3		X	1 (0.454)
*	*	*	*	*		*	*
PCNB	82688	Benzene, pentachloronitro-. Pentachloronitro-benzene Quintobenzene.	1*	3,4	U185	B	100 (45.4)
Pentachloronitrobenzene	82688	Benzene, pentachloronitro-. PCNB Quintobenzene.	1*	3,4	U185	B	100 (45.4)
Pentachlorophenol	87865	Phenol, pentachloro-	10	1,2,3,4	U242	A	10 (4.54)
*	*	*	*	*		*	*
Perchloroethylene	127184	Ethene, tetrachloro- Tetrachloroethene Tetrachloroethylene	1*	2,3,4	U210	B	100 (45.4)
*	*	*	*	*		*	*
Phenol	108952	Benzene, hydroxy-	1000	1,2,3,4	U188	C	1000 (454)
*	*	*	*	*		*	*
Phenol, 2,4-dinitro-	51285	2,4-Dinitrophenol	1000	1,2,3,4	P048	A	10 (4.54)
*	*	*	*	*		*	*
Phenol, 2-methyl-4,6-dinitro-, & salts.	534521	4,6-Dinitro-o-cresol, and salts.	1*	2,3,4	P047	A	10 (4.54)
*	*	*	*	*		*	*
Phenol, 4-nitro-	100027	p-Nitrophenol 4-Nitrophenol	1000	1,2,3,4	U170	B	100 (45.4)
Phenol, pentachloro	87865	Pentachlorophenol	10	1,2,3,4	U242	A	10 (4.54)
*	*	*	*	*		*	*
Phenol, 2,4,5-trichloro-	95954	2-4,5-Trichlorophenol	10	1,3,4	U230	A	10 (4.54)
Phenol, 2,4,6-trichloro-	88062	2,4,6-Trichlorophenol	10	1,2,3,4	U231	A	10 (4.54)
*	*	*	*	*		*	*
Phosgene	75445	Carbonic dichloride	5000	1,3,4	P095	A	10 (4.54)
Phosphine	7803512	Hydrogen phosphide	1*	3,4	P096	B	100 (45.4)
*	*	*	*	*		*	*
Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester.	56382	Parathion	1	1,3,4	UP089	A	10 (4.54)
*	*	*	*	*		*	*
Phosphorus	7723140		1	1,3		X	1 (0.454)
*	*	*	*	*		*	*
Phthalic anhydride	85449	1,3-Isobenzofurandione	1*	3,4	U190	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
POLYCHLORINATED BIPHENYLS.	1336363	Aroclors PCBs	10	1,2,3		X	1 (0.454)
Aroclor 1016	12674112		10	1,2,3		X	1 (0.454)
Aroclor 1221	11104282		10	1,2,3		X	1 (0.454)
Aroclor 1232	11141165		10	1,2,3		X	1 (0.454)
Aroclor 1242	53469219		10	1,2,3		X	1 (0.454)
Aroclor 1248	12672296		10	1,2,3		X	1 (0.454)
Aroclor 1254	11097691		10	1,2,3		X	1 (0.454)
Aroclor 1260	11096825		10	1,2,3		X	1 (0.454)
*	*	*	*	*		*	*
Propane, 1,2-dibromo-3-chloro.	96128	1,2-Dibromo-3-chloropropane.	1*	3,4	U066	X	1 (0.454)
Propane, 1,2-dichloro-	78875	1,2-Dichloropropane Propylene dichloride	5000	1,2,3,4	U083	C	1000 (454)
*	*	*	*	*		*	*
Propane, 2-nitro	79469	2-Nitropropane	1*	3,4	U171	A	10 (4.54)
1,3-Propane sultone	1120714	1,2-Oxathiolane, 2,2-dioxide.	1*	3,4	U193	A	10 (4.54)
*	*	*	*	*		*	*
2-Propenal	107028	Acrolein	1	1,2,3,4	P003	X	1 (0.454)
2-Propenamide	79061	Acrylamide	1*	3,4	U007	D	5000 (2270)
*	*	*	*	*		*	*
1-Propene, 1,3-dichloro-	542756	1,3-Dichloropropene	5000	1,2,3,4	U084	B	100 (45.4)
2-Propenenitrile	107131	Acrylonitrile	100	1,2,3,4	U009	B	100 (4.54)
*	*	*	*	*		*	*
2-Propenoic acid	79107	Acrylic acid	1*	3,4	U008	D	5000 (2270)
2-Propenoic acid, ethyl ester.	140885	Ethyl acrylate	1*	3,4	U113	C	1000 (454)
*	*	*	*	*		*	*
2-Propenoic acid, 2-methyl-, methyl ester.	80626	Methyl Nethacrylate	5000	1,3,4	U162	C	1000 (454)
*	*	*	*	*		*	*
Propylene dichloride	78875	1,2-Dichloropropane Propane, 1,2-dichloro-.	5000	1,2,3,4	U083	C	1000 (454)
Propylene oxide	75569		5000	1,3		B	100 (45.4)
1,2-Propylenimine	75558	Aziridine, 2-methyl- 2-Methyl aziridine	1*	3,4	P067	X	1 (0.454)
*	*	*	*	*		*	*
Quinoline	91225		1000	1,3		D	5000 (2270)
Quinone	106514	p-Benzoquinone 2,5-Cyclohexadiene-1,4-dione.	1*	3,4	U197	A	10 (4.54)
Quintobenzene	82688	Benzene, pentachloronitro. PCNB Pentachloronitrobenzene.	1*	3,4	U185	B	100(45.4)
Radionuclides (including radon).	N.A.		1*	3			(§)
*	*	*	*	*		*	*
SELENIUM AND COMPOUNDS.	N.A.	Selenium Compounds	1*	2,3			(**)
Selenium Compounds	N.A.	SELENIUM COMPOUNDS.	1*	2,3			(**)
*	*	*	*	*		*	*
Styrene	100425		1000	1,3		C	1000(454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
Sulfuric acid, dimethyl ester.	77781	Dimethyl sulfate	1*	3,4	U103	B	100(45.4)
*	*	*	*	*		*	*
TCDD	1746016	2,3,7,8,-Tetrachlorodibenzo-p-dioxin.	1*	2,3		X	1(0.454)
*	*	*	*	*		*	*
2,3,7,8-Tetrachlorodibenzo-p-dioxin.	1746016	TCDD	1*	2,3		X	1(0.454)
*	*	*	*	*		*	*
1,1,2,2,-Tetrachloroethane.	79345	Ethane, 1,1,2,2,-tetrachloro-.	1*	2,3,4	U209	B	100(45.4)
Tetrachloroethene	127184	Ethene, tetrachloro- Perchloroethylene Tetrachloroethylene	1*	2,3,4	U210	B	100(45.4)
Tetrachloroethylene	127184	Ethene, tetrachyloro Perchloroethylene Tetrachloroethlene	1*	2,3,4	U210	B	100(45.4)
Toluene	108883	Benzene, methyl	1000	1,2,3,4	U220	C	1000(454)
Toluenediamine	95807 496720 823405 25376458	Benzenediamine, ar-methyl-. 2,4-Toluene diamine	1*	3,4	U221	A	10(4,54)
2,4-Toluene diamine	95807 496710 823405 25376458	Benzenediamine, ar-methyl-. Toluenediamine	1*	3,4	U221	A	10(4.54)
Toluene diisocyanate	91087 5848349 26471625	Benzene, 1,3-diisocyanato methyl-. 2,4-Toluene diisocyanate-.	1*	3,4	U223	B	100 (45.5)
2,4-Toluene diisocyanate	91087 5848349 26471625	Benzene, 1,3-diisocyanatomethyl-. Toluene diisocyanate.	1*	3,4	U223	B	100 (45.5)
o-Toluidine	95534	Benzenamine, 2-methyl-	1*	3,4	U328	B	100(45.4)
*	*	*	*	*		*	*
Toxaphene	8001352	Camphene, octachloro- Chlorinated camphene	1*	1,2,3,4	P123	X	1 (0.454)
*	*	*	*	*		*	*
1,2,4-Trichlorobenzene	120821		1*	2,3		B	100 (45.5)
1,1,1-Trichloroethane	71556	Ethane, 1,1,1-trichloro- Methyl. chloroform	1*	2,3,4	U226	C	1000 (454)
1,1,2-Trichloroethane	79005	Ethane, 1,1,2-trichloro	1*	2,3,4	U227	B	100 (45.4)
Trichloroethene	79016	Ethene, trichloro- Trichloroethylene.	1000	1,2,3,4	U228	B	100 (45.4)
Trichloroethylene	79016	Ethene, trichloro Trichloroethene.	1000	1,2,3,4	U228	B	100 (45.4)
*	*	*	*	*		*	*
2,4,5-Trichlorophenol	95954	Phenol, 2,4,5-trichloro-	10	1,3,4	U230	A	10 (4.54)
2,4,6-Trichlorophenol	88062	Phenol, 2,4,6-trichloro-	10	1,2,3,4	U231	A	10 (4.54)
*	*	*	*	*		*	*
Triethylamine	121448		5000	1,3		D	5000 (2270)
*	*	*	*	*		*	*
Urea, N-menthyl-N-nitroso.	684935	N-Nitroso-N-methylurea	1*	3,4	U177	X	1 (0.454)
Urethane	51796	Carbamic acid, ethyl ester. Ethyl carbamate	1*	3,4	U238	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*		*	*
Vinyl acetate	108054	Vinyl acetate monomer ..	1000	1,3		D	5000 (2270)
Vinyl acetate monomer ...	108054	Vinyl acetate	1000	1,3	D		5000 (2270)
*	*	*	*	*		*	*
Vinylidence chloride	75354	1,1-Dichloroethylene ..... Ethene, 1,1-dichloro-	5000	1,2,3,4	U078	B	100 (45.4)
*	*	*	*	*		*	*

† Indicates the statutory source as defined by 1,2,3, and 4 below.

* * * * * * *

[1] Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 311(b)(4).
[2] Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA section 307(a).
[3] Indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA section 112.
[4] Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
[1] Indicates that the 1-pound RQ is a CERCLA statutory RQ.

* * * * * * *

**Indicates that no RQ is being assigned to the generic or broad class.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
*	* * * * * *
51796	Carbamic acid, ethyl ester Ethyl carbamate Urethane.
*	* * * * * *
57749	Chlordane Chlordane, alpha & gamma isomers CHLORDANE (TECHNICAL MIXTURE AND METABOLITES) 4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8- octachloro-2,3,3a,4,7,7a-hexahydro-.
*	* * * * * *
58899	γ-BHC Cyclohexane, 1,2,3,4,5,6-hexachloro (1α,2α,3β,4α,5α,6β)- Hexachlorocyclohexane (gamma isomer) Lindane Lindane (all isomers).
*	* * * * * *
60117	Benzenamine, N,N-dimethyl-4-(phenylazo-) Dimethyl aminoazobenzene p-Dimethylaminoazobenzene.
*	* * * * * *
72559	DDE 4,4'-DDE.
*	* * * * * *
74839	Bromomethane Methane, bromo- Methyl bromide.
*	* * * * * *
74873	Chloromethane Methane, chloro- Methyl chloride.
*	* * * * * *
74884	Iodomethane Methane, iodo- Methyl iodide.
*	* * * * * *
75003	Chloroethane Ethyl chloride.
*	* * * * * *
75092	Dichloromethane Methane, dichloro- Methylene chloride.
*	* * * * * *
75252	Bromoform Methane, tribromo-.
*	* * * * * *
75558	Aziridine, 2-methyl- 2-Methyl aziridine 1,2-Propylenimine.
*	* * * * * *
78933	2-Butanone MEK Methyl ethyl ketone.
*	* * * * * *
82688	Benzene, pentachloronitro- PCNB Pentachloronitrobenzene Quintobenzene.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
*	* * * * * *
91087	Benzene, 1,3-diisocyanatomethyl- Toluene diisocyanate 2,4-Toluene diisocyanate.
*	* * * * * *
92875	Benzidine [1,1'-Biphenyl]-4,4'diamine.
*	* * * * * *
94757	Acetic acid (2,4-dichlorophenoxy)-, salts & esters 2,4-D Acid 2,4-D, salts and esters.
*	* * * * * *
95807	Benzenediamine, ar-methyl- Toluenediamine 2,4-Toluene diamine.
*	* * * * * *
98828	Benzene, (1-methylethyl)- Cumene.
*	* * * * * *
106514	p-Benzoquinone 2,5-Cyclohexadiene-1,4-dione Quinone.
*	* * * * * *
106898	1-Chloro-2,3-epoxypropane Epichlorohydrin Oxirane, (chloromethyl)-.
*	* * * * * *
106934	Dibromoethane Ethane, 1,2-dibromo- Ethylene, dibromide.
*	* * * * * *
117817	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester Bis(2-ethylhexyl)phthalate DEHP Diethylhexyl phthalate.
*	* * * * * *
123911	1,4-Diethyleneoxide 1,4-Diethylenedioxide 1,4-Dioxane.
*	* * * * * *
131113	Dimethyl phthalate 1,2-Benzenedicarboxylic acid, dimethyl ester.
*	* * * * * *
151564	Aziridine Ethyleneimine.
*	* * * * * *
496720	Benzenediamine, ar-methyl- Toluenediamine 2,4-Toluene diamine.
*	* * * * * *
510156	Benzeneacetic acid, 4-chloro-α- (4-chlorophenyl)-α-hydroxy-, ethyl ester Chlorobenzilate.
*	* * * * * *
534521	4,6-Dinitro-o-cresol, and salts Phenol, 2-methyl-4,6-dinitro-, & salts.
*	* * * * * *
542881	Bis(chloromethyl)ether Dichloromethyl ether Methane, oxybis(chloro)-.
*	* * * * * *
584849	Benzene, 1,3-diisocyanatomethyl- Toluene diisocyanate 2,4-Toluene diisocyanate.
*	* * * * * *
823405	Benzenediamine, ar-methyl- Toluenediamine 2,4-Toluene diamine.
*	* * * * * *
1336363	Aroclors PCBs POLYCHLORINATED BIPHENYLS.
*	* * * * * *
1746016	TCDD 2,3,7,8-Tetrachlorodibenzo-p-dioxin.
*	* * * * * *
7803512	Hydrogen phosphide Phosphine.
*	* * * * * *
8001352	Camphene, octachloro- Chlorinated camphene Toxaphene.
*	* * * * * *
11096825	Aroclor 1260 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
*	* * * * * *
11097691	Aroclor 1254 Aroclors PCBs POLYCHLORINATED BIPHENYLS.

APPENDIX A TO § 302.4.—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
*	* * * * * *
11104282	Aroclor 1221 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
*	* * * * * *
11141165	Aroclor 1232 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
*	* * * * * *
12672296	Aroclor 1248 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
*	* * * * * *
12674112	Aroclor 1016 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
*	* * * * * *
25376458	Benzenediamine, ar-methyl- Toluenediamine 2,4-Toluene diamine.
*	* * * * * *
26471625	Benzene, 1,3-diisocyanatomethyl- Toluene diisocyanate 2,4-Toluene diisocyanate.
*	* * * * * *
53469219	Aroclor 1242 Aroclors PCBs POLYCHLORINATED BIPHENYLS.
*	* * * * * *

PART 355—EMERGENCY PLANNING AND NOTIFICATION

6. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

7. Part 355 is amended by revising the following entries in Appendices A and B, to read as set forth below:

* * * * *

APPENDIX A TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
*	* * * * *	*		*
79–11–8	Chloroacetic Acid		100	100/10,000
*	* * * * *	*		*
95–48–7	Cresol, o-		100	1,000/10,000
*	* * * * *	*		*
123–31–9	Hydroquinone	I	100	500/10,000
*	* * * * *	*		*
57–57–8	Propiolactone, Beta-		10	500
*	* * * * *	*		*
7550–45–0	Titanium Tetrachloride		1,000	100
*	* * * * *	*		*

*Only the statutory or final RQ is shown. For more information, see 40 CFR table 302.4.

Notes:

* * * * * * *

Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern (''Other chemicals'').

* * * * * * *

APPENDIX B TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS number order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
*	*	*	*	*
57–57–8	Propiolactone, Beta-		10	500
*	*	*	*	*
79–11–8	Chloroacetic Acid		100	100/10,000
*	*	*	*	*
95–48–7	Cresol, o-		100	1,000/10,000
*	*	*	*	*
123–31–9	Hydroquinone	I	100	500/10,000
*	*	*	*	*
7550–45–0	Titanium Tetrachloride		1,000	100
*	*	*	*	*

*Only the statutory or final RQ is shown. For more information, see 40 CFR table 302.4.

Notes:

* * * * * * *

Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern (''Other chemicals'').

* * * * * * *

[FR Doc. 95–13787 Filed 6–9–95; 8:45 am]

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Monday
June 12, 1995

Part III

Environmental Protection Agency

40 CFR Parts 257, 261, and 271

Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazard Waste Programs; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 261, and 271

[FRL–5209–4]

RIN 2050–AE11

Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing revisions to the existing Criteria for solid waste disposal facilities and practices. The proposed revisions would establish specific standards for non-municipal solid waste disposal facilities that receive conditionally exempt small quantity generator (CESQG) wastes. EPA is also proposing revisions to regulations for hazardous wastes generated by CESQGs. Today's proposal will clarify acceptable disposal options under Subtitle D of the Resource Conservation and Recovery Act (RCRA) by specifying that CESQG hazardous waste may be managed at municipal solid waste landfills subject to part 258 and at non-municipal solid waste facilities subject to the facility standards being proposed today.

The Agency is obligated to issue this proposal by Section 4010(c) of RCRA, and is issuing it today in partial settlement of a lawsuit brought by the Sierra Club to enforce the statutory mandate. The Agency generally believes that the facilities subject to today's proposal present a relatively small risk when compared to other conditions or situations, and that in a time of limited resources, EPA prefer to address higher priorities first. However, to satisfy its statutory and judicial obligations, today's proposal will clarify acceptable Subtitle D disposal options for non-municipal solid waste facilities that accept CESQG hazardous wastes. EPA has worked with the States, in their capacity as co-regulators, in developing standards that are flexible and efficient. To that end, EPA is proposing only the minimum standards described by the statute, and is offering maximum flexibility for states and facilities in meeting those standards. Indeed, in addition to proposing a flexible scheme modeled after the current part 258 Standards for municipal solid waste facilities, EPA is seeking comment on an option which would set a performance standard—that covered facilities be operated in a manner that is protective of human health and the environment. Under this approach, States would have maximum flexibility in developing standards appropriate to facilities under their jurisdiction.

DATES: Comments on this proposed rule must be submitted on or before August 11, 1995. Both written and electronic comments must be submitted on or before this date.

ADDRESSES: Commentors must send an original and two copies of their comments to: RCRA Information Center (5305), U.S. Environmental Protection Agency, 401 M Street, SW. Washington, D.C. 20460. All comments must be identified by docket number F–95–NCEP FFFFF. An original and two copies of Confidential Business Information (CBI) must be submitted under separate cover to: Document Control Officer (5305), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW. Washington, D.C. 20460.

Public comments and relevant documents are available for viewing in the EPA RCRA Information Center (RIC), located in Room M2616, at the EPA address above. The RIC is open for viewing from 9 to 4 Monday through Friday, except federal holidays. The public must make an appointment to review docket materials. Call (202) 260–9327 for appointments. Materials may be copied for $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For specific information on aspects of this proposed rule, please contact Paul Cassidy of the Industrial Solid Waste Branch of the Office of Solid Waste at 1–703–308–7281. For a paper copy of the **Federal Register** notice or for general information, please contact the RCRA Hotline at 1–800–424–9346 or at 1–703–412–9810.

SUPPLEMENTARY INFORMATION:

Official Record for Proposed Rule

Both the **Federal Register** notice and the supporting material will be available in electronic format on the Internet system through the EPA Public Access Server @ gopher.epa.gov. The official record for this proposal, as well as the public version available through Internet will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed paper form as they are received and will place the paper copies in the official record, which will include all comments submitted directly in writing. The official record for this rulemaking is the paper copy maintained at the address in **ADDRESSES**.

Electronic Filing of Comments

Comments may also be submitted electronically by sending electronic mail to RCRA-Docket @epamai.epa.gov. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments also will be accepted on disks in Wordperfect 5.1 file format or ASCII file format.

1. Through Gopher: Go to: gopher.epa.gov. From the main menu, choose ''EPA Offices and Regions''. Next, choose ''Office of Solid Waste and Emergency Response (OSWER)''. Finally, choose ''Office of Solid Waste''.

2. Through FTP: Go to: ftp.epa.gov.

Login: anonymous

Password: Your Internet Address

Files are located in /pub. All OSW files are in directories beginning with ''OSW''.

3. Through Telnet: Go to: gopher.epa.gov. Choose the EPA Public Access Gopher. From the main (Gopher) menu, choose ''EPA Offices and Regions.'' Next, choose ''Office of Solid Waste and Emergency Response (OSWER).'' Then, choose ''Office of Solid Waste.''

4. Through MOSAIC: Go to: http://www.epa.gov. Choose the EPA Public Access Gopher. From the main (Gopher) menu, choose ''EPA Offices and Regions''. Next, choose ''Office of Solid Waste and Emergency Response (OSWER)''. Finally, choose ''Office of Solid Waste''.

5. Through dial-up access: Dial 919–558–0335. Choose EPA Public Access Gopher. From the main (Gopher) menu, choose ''EPA Offices and Regions''. Next, choose ''Office of Solid Waste and Emergency Response (OSWER)''. Finally, choose ''Office of Solid Waste''.

Supporting Documents

All of the main and secondary supporting documents that were used in the development of this proposal have been placed in the docket. EPA is making the main supporting documents (listed below) available in electronic format on the Internet System through the EPA Public Access Server at gopher.epa.gov. A paper copy of these main supporting documents is available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. The phone number at NTIS is (703) 487–4650.

Main Supporting Documents

1. Background Document for the CESQG Rule, U.S. EPA, 1995, PB95–208930.
2. Damage Cases: Construction and Demolition Waste Landfills, U.S. EPA, Office of Solid Waste, Prepared by ICF, February 1995, PB95–208922.
3. Construction and Demolition Waste Landfills, U.S. EPA, Office of Solid Waste, Prepared by ICF, February, 1995, PB95–208906.
4. List of Industrial Waste Landfills and Construction and Demolition Waste Landfills, U.S. EPA, Office of Solid Waste, Prepared by Eastern Research Group, September 30, 1994, PB95–208914.
5. Generation and Management of CESQG Waste, U.S. EPA, Office of Solid Waste, Prepared by ICF, July 1994, PB95–208898.
6. Cost and Economic Impact Analysis of the CESQG Rule, Prepared by ICF, February, 1995, PB95–208948.

How to Access the Net

1. Through Gopher: Go to: gopher.epa.gov. From the main menu, choose ''EPA Offices and Regions''. Next, choose ''Office of Solid Waste and Emergency Response (OSWER)''. Next, choose ''Office of Solid Waste''. Then, choose ''Non-Hazardous Waste—RCRA Subtitle D''. Finally, choose ''Industrial''.
2. Through FTP: Go to: ftp.epa.gov.
Login: anonymous
Password: Your Internet Address
Files are located in directories/pub/gopher. All OSW files are in directories beginning with ''OSW''.
3. Through MOSAIC: Go to: http://www.epa.gov. Choose the EPA Public Access Gopher. From the main (Gopher) menu, choose ''EPA Offices and Regions''. Next, choose ''Office of Solid Waste and Emergency Response (OSWER)''. Next, choose ''Office of Solid Waste''. Then, choose ''Non-Hazardous Waste—RCRA Subtitle D''. Finally, choose ''Industrial''.
4. Through dial-up access: Dial 919–558–0335. Choose EPA Public Access Gopher. From the main (Gopher) menu, choose ''EPA Offices and Regions''. Next, choose ''Office of Solid Waste and Emergency Response (OSWER)''. Next, choose ''Office of Solid Waste''. Then, choose ''Non-Hazardous Waste—RCRA Subtitle D''. Finally, choose ''Industrial''.

Preamble Outline

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X. Environmental Justice Issues
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I. Authority

These regulations are being proposed under the authority of sections 1008, 2002 (general rulemaking authority), 3001(d)(4), 4004 and 4010 of RCRA, as amended. Section 3001(d)(4) authorizes EPA to promulgate standards for generators who do not generate more than 100 kilograms per month of hazardous waste. Section 4010(c) directs EPA to revise Criteria promulgated under sections 1008 and 4004 for facilities that may receive hazardous household wastes (HHW) or small quantity generator (SQG) hazardous waste.

II. Background

A. Current Solid Waste Controls Under the Resource Conservation and Recovery Act (RCRA) Non-Hazardous Waste Management: Municipal Wastes

As added by the Hazardous and Solid Waste Amendments (HSWA) of 1984, section 4010(c) requires that the Administrator revise the existing part 257 Subtitle D Criteria used to classify facilities as sanitary landfills or open dumps by March 31, 1988, for facilities that may receive household hazardous waste or hazardous waste from small quantity generators. The required revisions are those necessary to protect human health and the environment and which take into account the practicable capability of such facilities. At a minimum, the revised Criteria must include ground-water monitoring as necessary to detect contamination, location restrictions, and provide for corrective action, as appropriate.

On October 9, 1991, EPA promulgated revised Criteria for Solid Waste Disposal Facilities accepting household hazardous wastes. These revisions fulfilled the part of the statutory mandate found in RCRA section 4010 for all facilities that receive household hazardous wastes. (Any facility receiving any household waste is subject to the revised Criteria, which were relocated at 40 CFR part 258 for purposes of clarity). Revisions to the part 257 Criteria for other Subtitle D disposal facilities that may receive conditionally exempt small quantity generator (CESQG) hazardous wastes were delayed as the Agency had little information concerning the potential or actual impacts that these types of facilities may have on human health and the environment. CESQGs are those that generate no more than 100 kilograms of hazardous waste or no more than one kilogram of acutely hazardous waste in a month and who accumulate no more than 1000 kilograms of hazardous waste or no more than one kilogram of acutely hazardous waste at one time.

B. Sierra Club Lawsuit

The Sierra Club, on October 21, 1993, filed suit against the EPA in the United States District Court for the District of Columbia, seeking to compel the EPA to promulgate revised Criteria for nonmunicipal facilities that may receive small quantity generator hazardous waste.

As a result of the October 21, 1993 lawsuit, the EPA and the Sierra Club reached agreement on a schedule concerning revised Criteria for non-municipal facilities that may receive

CESQG wastes. This schedule requires that the EPA Administrator sign a proposal by May 15, 1995 and a final rule by July 1, 1996. Today's proposed amendments to 40 CFR parts 257 and 261 respond directly to the Sierra Club challenge to EPA's revised Criteria for MSWLFs.

III. Summary of Today's Proposed Regulatory Approach

Today's proposal would add the statutory minimum requirements for non-municipal solid waste disposal facilities that receive CESQG hazardous waste. Any non-municipal solid waste disposal facility that does not meet the proposed requirements may not receive CESQG hazardous waste. Sections 257.5 through 257.30 are being proposed to address the facility standards for owners/operators of non-municipal solid waste disposal facilities that receive CESQG hazardous wastes. The requirements being proposed in §§ 257.5 through 257.30 are substantially the same as the statutory minimum requirements developed for 40 CFR part 258. The location restrictions are proposed to be effective 18 months after publication of the final rule while the ground-water monitoring and corrective action requirements are proposed to be effective 24 months after publication of the final rule.

The Agency decided to use the previously promulgated MSWLF Criteria in part 258 as the basis for today's proposal for a number of reasons. The Agency believes that the part 258 Criteria are being used as mandatory standards by some States for non-municipal solid waste disposal facilities. Furthermore, additional States are incorporating as mandatory requirements standards that are substantially similar to the part 258 Criteria. The Agency also believes that the part 258 Criteria, particularly the ground-water monitoring and corrective action requirements, are an appropriate set of performance standards and minimum requirements that can be applied at non-municipal solid waste disposal facilities that receive CESQG hazardous waste to protect human health and the environment. In addition, EPA is requesting comment on an alternative approach which is solely a performance standard without the national minimum requirements in part 258.

Today's proposal also amends the existing language of § 261.5 clarifying acceptable Subtitle D management options for CESQGs. The existing language in § 261.5, paragraphs (f)(3) and (g)(3) allows for a CESQG hazardous waste to be managed at a hazardous waste facility (either in interim status or permitted), a reuse or recycling facility, or a non-hazardous solid waste facility that is permitted, licensed, or registered by a State to manage municipal or industrial waste. Today's proposal would continue to allow CESQG waste to be managed at a hazardous waste facility or at a reuse or recycling facility. Today's proposal, however, will require that if CESQG waste is managed in a Subtitle D disposal facility, it must be managed in a MSWLF that is subject to part 258 or a non-municipal solid waste disposal facility that is subject to the facility standards being proposed in §§ 257.5 through 257.30.

A complete discussion of the rationale of today's proposed approach, specifics of the proposed changes, and related issues is presented in Reference #1.

As previously discussed, today's proposal responds to both the statutory language in RCRA section 4010(c) and to the Sierra Club lawsuit. In responding initially to the statutory language of section 4010(c), EPA elected to regulate municipal solid waste landfills first, due to the comparatively higher risks presented by these types of facilities. As will be discussed later in today's preamble, the subject of today's proposal—non-municipal solid waste disposal facilities that receive CESQG waste—presents a small risk relative to risks presented by other environmental conditions or situations. Given this lower risk, the Agency would have elected not to issue this proposal at this time. In a time of limited resources, common sense dictates that we deal with higher priorities first, a principle on which EPA, members of the regulated community, and the public can agree. The Agency requests comment from members of the public and regulated community on whether they agree with the Agency's position that this rulemaking is a low priority.

However, given the D.C. Circuit's reading of RCRA section 4010(c), *Sierra Club* v. *EPA*, 992 F.2d 3337, 347 (D.C. Cir. 1993), and the schedule established as a result of the litigation initiated by Sierra Club in district court, the Agency believes it must issue this proposal now (although there are higher priorities within the Agency). Faced with having to issue this proposal for a class of facilities that do not generally pose risks as high as municipal solid waste landfills, the Agency is proposing alternatives that address only the statutory minimum requirements in an attempt to reduce the economic burden on the regulated community.

IV. Characterization of CESQG Waste, Industrial D Facilities That May Receive CESQG Wastes, and Existing State Programs Related to CESQG Disposal

A. CESQG Waste Volumes, Generators, and Management

In preparation for this rulemaking, EPA sought to characterize the CESQG universe. EPA examined several national, state, and local studies that contained information on CESQGs, and summarized this information into five categories: (1) Number of establishments, (2) waste volumes, (3) major waste generating industries, (4) major waste types, and (5) waste management practices. All of this information is contained in Reference #2. Reference #7 also presents an earlier comprehensive overview of the CESQG universe. The Agency is interested in receiving data on the current management practices for CESQG wastes likely to be covered by this rulemaking.

B. Facilities That May Receive CESQG Waste

1. Manufacturing Industries With On-Site CESQG Disposal

The first type of facility that may receive CESQG waste is a manufacturing facility that co-disposes its industrial non-hazardous process waste on-site with its CESQG hazardous wastes.

The Agency's 1987 ''Screening Survey of Industrial Subtitle D Establishments'' was used as the starting point in the Agency's evaluation of the number of potential establishments that operated land-based units for their industrial non-hazardous waste (Reference#3). The Screening Survey projected that only 605 establishments managed their CESQG waste on-site in a land-based unit (605 establishments represents approximately 5% of the total 12,000 establishments that managed industrial waste on-site in land-based units).

The Agency has conducted meetings and conference calls with some industries to ascertain the current status of CESQG hazardous waste generation and management. The results of those meetings and conference calls are summarized in Reference #1.

In regard to industrial waste facilities, the Agency believes that on-site co-disposal of industrial wastes with some amount of CESQG waste is a very limited practice. The Agency believes that industrial waste disposal facilities that may still be disposing of CESQG waste on-site, will elect to send their CESQG waste off-site to a municipal landfill, a hazardous waste landfill or

off-site for treatment or recycling. These options would be cheaper for industrial waste facilities vs. continuation of CESQG on-site disposal and compliance with today's proposed standards (i.e., ground-water monitoring and corrective action).

The Agency wishes to emphasize that this proposal does not change the manner in which waste is determined to be hazardous. Generators of wastes have an obligation to determine through testing or their knowledge of the waste if a waste is a hazardous waste (40 CFR 262.11). The generator must then determine if any hazardous waste he generates is regulated hazardous waste, or conditionally exempt small quantity generator hazardous waste (40 CFR 261.5).

The Agency is requesting comment on the prevalence of manufacturing industries that manage CESQG hazardous wastes on-site along with volume estimates. The Agency is also interested in obtaining comments on the Agency's assumption that on-site disposal of CESQG hazardous waste at industrial waste facilities has decreased overall and will not continue in the future.

2. Commercial Off-Site Facilities

The second type of facility that in some cases receive CESQG waste is a commercial off-site facility that disposes of only industrial non-hazardous wastes with some amount of CESQG hazardous wastes being co-disposed at the facility. Based on information from the groups listed below, the Agency estimates that there are only 10–20 commercial off-site facilities that receive only non-hazardous industrial wastes. (Off-site commercial facilities that receive household hazardous waste are subject to the part 258 Criteria.) However, in meetings with the Environmental Industry Associations (EIA) (formerly known as the National Solid Waste Management Association) and Browning Ferris Industries, the Agency was told that as a general matter CESQG disposal is prohibited at these 10–20 facilities as a result of permitting conditions and due to decisions at the corporate level of the individual companies not to accept CESQG waste.

3. Construction and Demolition Landfills

The last group of facilities that receive CESQG wastes are construction and demolition waste landfills. The Agency's List of Construction and Demolition Waste Landfills estimates approximately 1900 construction and demolition waste facilities. These construction and demolition landfills dispose of construction waste and demolition debris (which generally refers to waste materials generated as a result of construction, renovation, or demolition). Many types of wastes are disposed of in construction and demolition landfills, such as metals, wood, concrete, dry wall, asphalt, rocks, soil, plastics, pipes and glass. Construction and demolition landfills may also receive CESQG hazardous waste materials, which could include things such as paints, adhesives, and roofing cements. Although the general term ''construction and demolition waste'' is used to describe all wastes generated in construction, renovation, and demolition activities, the specific types of waste generated are a direct result of the type of project. Construction of a new house, demolition of old buildings as part of a restoration of a downtown area, renovation of an old office building, and new highway construction all result in different types of construction and demolition waste materials being generated.

The report entitled ''Construction Waste and Demolition Debris Recycling . . . A Primer'' divided construction and demolition waste activities into five categories. These five categories and the typical construction and demolition waste materials associated with each category are presented below:

Roadwork Material: Mostly asphalt, concrete (with or without reinforcing bar), and dirt

Excavated Material: Mostly dirt, sand, stones (sometimes contaminated with site clearance wood waste and buried pipes)

Building Demolition: Mainly mixed rubble, concrete, steel beams, pipes, brick timber and other wastes from fittings and fixtures

Construction/Renovation: Mixed waste including wood, roofing, wall board, insulation materials, pieces of duct work and plumbing

Site Clearance: Mostly trees and dirt with the potential for some concrete, rubble, sand and steel

Some construction and demolition waste facilities may be subject to the requirements being proposed today. Construction and demolition waste facilities that receive wastes that are CESQG hazardous wastes will have to comply with the proposed changes in §§ 257.5 through 257.30.

CESQG hazardous wastes generated in construction, renovation, and demolition are most likely to be specific chemicals or products used in these activities. Listed below are typical examples of wastes generated by construction and demolition activities that may be CESQG wastes, if the wastes are hazardous and are generated under the CESQG limits (<100 kg per month, or less than 1 kg per month of acute hazardous waste):

- Excess materials used in construction, and their containers. Examples: adhesives and adhesive containers, leftover paint and paint containers, excess roofing cement and roofing cement cans.
- Waste oils, grease, and fluids. Examples: machinery lubricants, brake fluids, engine oils.
- Waste solvents or other chemicals that would fail a characteristic or that are listed as a hazardous waste that are removed from a building prior to demolition (e.g., ignitable spent solvents, spent acids or bases, listed spent solvents (F001–F005), or listed unused commercial chemical products that are to be discarded).

General construction and demolition debris (e.g., rubble from building demolition) would typically be hazardous waste only if it exhibits one of the four characteristics of hazardous waste: ignitability, corrosivity, reactivity, or toxicity (see subpart C of 40 CFR part 261). To determine if such debris is hazardous, the generator should use knowledge of the waste or test to determine if a representative sample of the waste exhibits any of the characteristics. See 40 CFR 262.11. See also Chapter nine of ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (SW–846), Third Edition, on how to develop a sampling program. As an example, if a building is demolished, the generator should use his knowledge concerning the building debris, or test a representative sample of the building debris, to see if the building debris exhibits a characteristic of hazardous waste.

Prior to demolishing a building, the owner or the demolition company may choose to remove components of the building that contain concentrated constituents of concern such as lead pipe, lead flashing, mercury containing thermostats and switches, or mercury-containing lamps (light bulbs). This may be done for purposes of avoiding concern that the entire demolition rubble may exhibit the characteristic of toxicity, for recycling and resource conservation, or as required by state or local law. For purposes of resource conservation, the Agency encourages removal of items that may be cost-effectively recycled or reused. It should be noted that any removed items should be managed in compliance with applicable requirements, including, if the items exhibit characteristics, the

requirements for CESQGs or the full hazardous waste regulations. Also note that some such items may be, in the future, covered under streamlined ''universal waste'' regulations that would minimize the applicable regulatory requirements. (See final ''universal waste rule,'' 60 FR 25492, May 11, 1995.)

Literature that was evaluated by the Agency and summarized in Chapter 2 of the Agency's report ''Construction and Demolition Waste Landfills'' identify a number of wastes that are referred to using such terms as ''hazardous,'' ''excluded,'' ''unacceptable,'' ''problem,'' ''potentially toxic,'' or ''illegal.'' It is not necessarily true that all of these wastes meet the definition of ''hazardous'' under Subtitle C of RCRA, but they provide an indication of the types of wastes that may be present in the construction and demolition waste stream that are considered by others to be a potential problem.

A construction and demolition waste generator should contact their State Solid Waste Program for their guidance or rules concerning the types of construction and demolition wastes that the State considers to be hazardous.

C. Existing State Programs

1. State Requirements Pertaining to Management of CESQG Hazardous Wastes

Since the existing controls governing the disposal of CESQG waste are under the Subtitle C program (i.e., § 261.5), State requirements must be at least as stringent as the Federal requirements. States may however establish more stringent controls for CESQGs within their jurisdiction. Some States require that CESQGs obtain a hazardous waste ID number while other States require CESQGs to use a manifest for off-site transportation. Some States require that all or some portion (e.g., those with liquid industrial and ignitable wastes) of CESQG waste be managed at only permitted Subtitle C facilities. States that require that CESQG waste be managed at only Subtitle C facilities would prohibit CESQG disposal in a municipal, non-hazardous industrial, or construction and demolition waste landfill.

2. State Requirements for Construction and Demolition Facilities

EPA conducted a study to determine the current regulatory standards for construction and demolition facilities that are applicable on a State level. State regulatory standards for construction and demolition facilities vary State-by-State and are generally not as detailed nor environmentally stringent as State standards for municipal solid waste landfills. Furthermore, States apply standards more frequently to off-site construction and demolition waste facilities vs. on-site construction and demolition waste facilities. In general, the EPA study focussed on the number of State programs that had requirements for the statutory minimum components specified in RCRA section 4010(c). The numbers, discussed below, correspond to the number of States that impose the requirement or standard on off-site construction and demolition waste facilities. Generally, a smaller number of States impose requirements on on-site facilities.

The most common location restrictions that States apply to C&D facilities relate to airports and bird hazards, wetlands and floodplains. A majority of the States (35) have restrictions applicable to construction and demolition facilities being located within the 100-yr. floodplain. Twenty-five (25) States have location restrictions pertaining to construction and demolition disposal facilities in wetlands. Similarly, 21 States have location restrictions for some or all construction and demolition facilities pertaining to airports and bird hazards. Fewer States have adopted location restrictions pertaining to seismic impact zones, fault areas, or unstable areas.

With regard to ground-water monitoring and corrective action, 29 States require some or all construction and demolition facilities to monitor ground-water and 22 States have corrective action requirements. For those States that impose ground-water monitoring requirements, most States have requirements that are substantially less stringent than the Municipal Solid Waste Landfill Criteria (part 258). With regard to those States that impose corrective action requirements, States usually require that either the permit applicant submit a corrective action plan with the permit or require the facility owner/operator to submit a plan after a release to ground water is detected.

V. Discussion of Today's Regulatory Proposal

A. Non-Municipal Solid Waste Disposal Facilities That Receive CESQG Hazardous Waste

This rule applies to non-municipal solid waste disposal facilities that receive CESQG hazardous waste, and the rule would provide that only such facilities which meet the requirements in §§ 257.5 through 257.30 ''may receive'' CESQG waste, as required by RCRA section 4010(c). Any non-municipal solid waste disposal facility that does not meet the proposed requirements may not receive CESQG hazardous wastes. The non-municipal units that are subject to this rule are surface impoundments, landfills, land application units and waste piles that receive CESQG waste for storage, treatment, or disposal. This is based on the existing applicability of part 257 to all solid waste disposal facilities (40 CFR 257.1(c)). Disposal is defined at § 257.2 to mean ''the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waster, including ground waters.'' This is also the statutory definition of ''disposal'' in RCRA section 1004(3). The definition covers any placement of waste on the land whether it is intended to be temporary or permanent.

B. Decision to Impose or Go Beyond the Statutory Minimum Components

RCRA section 4010(c) requires that these revised Criteria must at a minimum include location restrictions, ground-water monitoring as necessary to detect contamination, and corrective action, as appropriate. The part 258 Municipal Solid Waste Landfill Criteria went beyond the statutory minimum requirements (see 56 FR 50977) and included the following additional requirements: Operational requirements, design standards, closure and post-closure care requirements and financial assurance standards. The Municipal Solid Waste Landfill Criteria went beyond the statutory minimum components for a variety of reasons. Some of these reasons included:

—163 case studies that revealed ground-water contamination at 146 MSWLFs, along with 73 MSWLFs that had documented cases of surface water contamination,

—29 documented cases of uncontrolled methane releases at MSWLF causing fires and explosions at 20 of the 29 facilities,

—A high percentage of National Priority List (NPL) sites were MSWLFs (184 sites out of 850 as of May 1986), and

—A belief, based on risk modelling, that some MSWLFs presented unacceptable risks to human health.

Taken together, these problems demonstrated a pattern of recurring problems and potential hazards associated with MSWLFs best addressed by requiring a comprehensive set of facility standards.

Today's proposal imposes only the statutory minimum components for non-municipal solid waste disposal facilities that receive CESQG hazardous wastes. Based on the data reviewed below, the Agency believes that these facilities do not pose risks that would warrant more comprehensive facility standards.

1. Construction and Demolition Waste Facilities

The Agency analyzed existing leachate and ground-water monitoring data, and damage cases associated with construction and demolition waste management to assess potential risks associated with construction and demolition waste disposal facilities. Landfill leachate sampling data and ground-water monitoring data were collected from states and from general literature provided to the Agency by the National Association of Demolition Contractors (NADC).

a. Construction and Demolition Leachate. EPA evaluated representative construction and demolition waste leachate values (''Construction and Demolition Waste Landfills''). (This data was compiled by NADC). Leachate sampling data for 305 parameters sampled for at one or more of 21 construction and demolition landfills were compiled into a database.

Of the 305 parameters sampled for, 93 were detected at least once. The highest detected concentrations of these parameters were compared to regulatory or health-based ''benchmarks,'' or concern levels, identified for each parameter. Safe Drinking Water Act Maximum Contaminant Levels (MCLs) or Secondary Maximum Contaminant Levels (SMCLs) were used as the benchmarks if available. Otherwise, health-based benchmarks for a leachate ingestion scenario were identified; these were either reference doses (RfDs) for non-carcinogens, or 10^{-6} risk-specific doses (RSDs) for carcinogens. Benchmarks were unavailable for many parameters because they have not been studied sufficiently.

Of the 93 parameters detected in C&D landfill leachate, 25 had at least one measured value above the regulatory or health-based benchmark. For each of these 25 parameters, the median leachate concentration was calculated and compared to its benchmark. The median value was first calculated among the samples taken at each landfill, and then across all landfills at which the parameter was detected. Due to anomalies and inconsistencies among the sampling equipment used at different times and at different landfills, non-detects were not considered in determining median values; i.e., the non-detects were discarded before calculating both individual landfill concentration medians and medians across landfills. Thus, the median leachate concentrations represent the median among the detected values, rather than the median among all values. The median concentration among all values would in most cases have been lower than those calculated here.

Based on (1) the number of landfills at which the benchmark was exceeded and (2) a comparison between the median detected concentration and the benchmark, seven parameters emerge as being potentially problematic. The Agency identified this list of 7 potentially problematic parameters by eliminating from the original list of 25 parameters any parameter that was only detected at one landfill (this was determined to be not representative) and, furthermore, eliminating any parameter whose median concentration did not exceed the benchmark value for that parameter. The 7 potentially problematic parameters are as follows:

1,2-Dichloroethane
Methylene chloride
Cadmium
Iron
Lead
Manganese
Total dissolved solids

The benchmark values for three of the parameters (total dissolved solids, iron, and manganese) are secondary MCLs (SMCLs). Secondary MCLs are set to protect water supplies for aesthetic reasons, e.g., taste, rather than for health-based reasons. The remaining 4 constituents, their calculated medians, and health-based benchmark values are as follows:

Constituent	Median concentration	Health-based values	
		Value	Source
1,2-Dichloroethane	19 µg/l	5 µg/l	MCL.
Methylene chloride	15.2 µg/l	5 µg/l	10^{-6} RSD.
Cadmium	10.5 µg/l	5 µg/l	MCL.
Lead	55 µg/l	15 µg/l	Action level.

The next step in evaluating the significance of these constituent concentrations is to apply an exposure model to develop a relationship between the constituent concentration in the environment at an assumed exposure point and the constituent concentration in the waste. This is because constituents released from a waste undergo a variety of environmental fate and transport processes that result in exposure point concentrations that are lower than levels in the waste stream or in leachate.

The Agency assumed a dilution attenuation factor (DAF) of 100 for the fate and transport analysis. The value of 100 was selected based on the development of the Toxicity Characteristic (40 CFR 261.24). The DAF is an estimate of the factor by which the concentration is expected to decrease between the waste management facility and a hypothetical downgradient drinking water well. A multiplier of 100 corresponds to a cumulative frequency close to the 85th percentile from the EPACML simulations used to support the TC rule. In other words, in this exposure scenario, an estimated 15 percent of the drinking water wells closest to unlined municipal landfills could have contaminated concentrations above MCLs. Dividing the calculated median concentration by the DAF of 100 and comparing the new concentration allows for an estimate as to whether the new concentration will exceed the health-based value at an exposure point. In using the DAF of 100, the resulting new concentrations are all below their respective health-based values. The resulting concentrations as compared to the health-based values are presented in the table below.

Constituent	Median concentration divided by DAF of 100	Health-based value
1,2-Dichloro-ethane.	.19 µg/l	5 µg/l
Methylene chloride	.152 µg/l	5 µg/l
Cadmium	.105 µg/l	5 µg/l
Lead	.55 µg/l	15 µg/l

b. Construction and Demolition Damage Case Analysis. EPA conducted

a study (''Damage Cases: Construction and Demolition Waste Landfills'') to determine whether the disposal of C&D debris in C&D landfills has led to the contamination of ground or surface water or damages to ecological resources. All of the damage case information EPA evaluated came from existing information in State files and literature sources. EPA was able to identify only 11 C&D landfills with evidence of ground water or surface water contamination. EPA found no documented evidence of existing human health risks or ecosystem damages at construction and demolition landfills and little documented evidence of off-site contamination.

When the Agency reviewed existing sources of data for C&D damage cases, the Agency reviewed existing Superfund databases (NPL), contacted EPA regional representatives, 32 States, county environmental Agencies, and existing studies or reports providing background information on C&D facilities and damages.

When EPA searched for C&D damage cases, several criteria were used to identify where the damages could reasonably be associated with construction and demolition facilities and construction and demolition waste disposal. First and foremost, the Agency sought to identify C&D facilities that accepted predominantly C&D wastes. Landfills that had received significant quantities of municipal waste, non-hazardous industrial waste, or hazardous waste in the past were excluded from consideration. Additionally construction and demolition sites located near other facilities or leaking underground storage tanks that could reasonably be the source of contamination were excluded as possible C&D damage cases. Lastly, there needed to be documented evidence of contamination at the C&D site.

The 11 damage cases that the Agency has identified are from New York, Virginia, and Wisconsin. Virginia and Wisconsin have required groundwater monitoring since 1988 at C&D facilities. The facilities in New York were among 9 C&D sites investigated due to public concerns about possible hazardous waste disposal and potential human health and environmental impacts.

A study of the 11 C&D sites revealed on-site ground-water contamination at all of the facilities and surface water contamination at 6 of the 11 sites, with the main contaminants being metals and other inorganics. At 3 of the 11 facilities, sediment contamination was also detected. Although most of the contamination associated with these damage cases occurred on-site, 2 of the eleven facilities did have off-site contamination (both facilities had sediments and surface water contamination occurring off-site).

Although most of the 11 sites were monitored for a wide range of organic and inorganic constituents, virtually all of the contamination was associated with inorganics. Constituents that exceeded State ground-water protection standards or Federal drinking water criteria most frequently were manganese (9 sites), iron (8 sites), total dissolved solids (6 sites), lead (5 sites), magnesium (4 sites), sodium (4 sites), pH (3 sites) and sulfate (3 sites). The other 8 constituents that were detected in ground water at these 11 sites were detected at only one or two sites.

For the 6 sites that had surface water contamination, the constituents that exceeded State surface water standards or Federal Ambient Water Quality Criteria most frequently were iron (4 sites), zinc (3 sites), lead (2 sites), and copper (2 sites). The other 5 constituents that were detected in surface water at these 6 sites were detected only once. No fish kills or other observable impacts on aquatic life were reported in any of the references that the Agency reviewed.

A look at the most frequently detected constituents in ground water or surface water reveals that of the 10 constituents, 7 are a concern due to SMCLs; only lead, magnesium, and sodium are not. Magnesium was found to exceed only an applicable State standard by a factor of 4 times, while sodium was found to exceed an applicable State standard by a factor of 14. Lead was found in ground water to exceed the Federal action level at the tap (15 µg/l) by a factor of 6. Lead was also found in surface water to exceed the established Federal Ambient Water Quality Criteria by a factor of 16 to 300 (although for the higher factor the reported value of lead in the surface water was ''estimated'').

c. Construction and Demolition Ground-Water Monitoring Data. Limited ground-water monitoring data suggests that a similar set of parameters that are detected in C&D leachate and that appear in damage cases associated with C&D facilities are also detected in ground water. Based on the limited ground-water data, only 19 parameters had a maximum value exceeding a health-based benchmark. Of these 19 parameters, 8 exceeded a secondary MCL (TDS, sulfates, Ph, manganese, chlorides, iron, copper, and aluminum). For the remaining 11 parameters, 5 are organics (Bis(2-ethylhexyl) phthalate, methylene chloride, tetrachloroethene, 1,2,4-trichlorobenzene, and 1,1,1-trichloroethane), 5 are inorganics (arsenic, cadmium, lead, mercury, and nickel), and 1 is a conventional parameter (nitrate). Only one constituent (cadmium) exceeded its health-based value by an order of magnitude. Some constituents had a maximum ground-water value just exceeding its health-based value. It is important to remember that when looking at the limited ground-water monitoring data what is being discussed in this paragraph are maximum levels; additional sampling events for these constituents resulted in lower levels or non-detects.

d. Conclusions for Construction and Demolition Facilities. While the data on construction and demolition waste landfills are limited, the Agency has reached some conclusions. Based on evaluation of the data analyzed above, individual construction and demolition waste facilities may have caused limited damage to ground water and surface water and potentially, may pose a risk to human health and the environment. Individual C&D facilities may also affect usability of drinking water due to aesthetic impacts. However, the Agency believes that C&D facilities, in general, do not currently pose significant risks and that individual damage cases are limited in occurrence. The small number of damage cases and the leachate concentration data reviewed above support these conclusions. Ground-water monitoring and corrective action at these facilities will ensure that any releases and potential risks at individual facilities will be identified and corrected in a timely fashion to protect human health and the environment. Location restrictions will ensure that non-municipal solid waste disposal facilities that receive CESQG waste will be located in acceptable areas, thereby, providing further protection of human health and the environment. Because construction and demolition waste facilities, in general, do not currently pose significant risk, the Agency has concluded that the statutory minimum requirements will ensure protection of human health and the environment.

2. Off-Site Commercial Landfills

As for the 10–20 commercial off-site facilities that accept only industrial wastes, the Agency understands that corporate policy has been to subject these types of facilities to stringent environmental controls. In addition, State regulations also apply to these types of facilities. A facility of this type generally employs a liner, has closure and post-closure care requirements and financial assurance standards. These

State and corporate controls go beyond the statutory minimum controls and therefore the Agency believes that there is no need, on the Federal level, to impose additional standards beyond the statutory minimum.

3. Request for Additional Data and Comments Concerning Statutory Minimum or More Comprehensive Facility Requirements

The leachate and ground-water monitoring data and the damage cases analyzed represent a small number of facilities relative to the construction and demolition facility universe. The Agency solicits any additional data concerning C&D facilities to further assess the potential risks they may pose, as well as additional data on commercial industrial solid waste facilities or other types of facilities that may be subject to today's proposal.

The Agency also requests comment on whether the requirements being proposed today should go beyond the statutory minimum components. Requirements beyond the statutory minimum components could include all or any of the following components: Operational criteria, design standards, closure and post-closure care requirements, and financial assurance standards. The Agency is requesting that commentors provide data that documents the need to go beyond the statutory minimum components. The Agency is also requesting that commentors be specific as to whether any additional controls should be identical to the part 258 Criteria for municipal landfills or should require a different standard and what that standard should be.

C. Decision to Establish Facility Standards Under Part 257 and Revisions to Part 261

The Agency proposes today to establish facility standards for non-municipal solid waste disposal facilities that receive CESQG hazardous wastes. Section 4010(c) states that the Agency should revise the existing part 257 Criteria for facilities that ''may receive'' CESQG waste. Clearly, today's proposal responds to the statutory language. The Agency is proposing to establish facility standards, in a separate section of part 257, for non-municipal solid waste disposal facilities that receive CESQG hazardous waste. By providing that only those facilities meeting the new standards ''may receive'' CESQG waste, the Agency believes it will satisfy the statutory mandate of RCRA section 4010.

The Agency is also proposing revisions to the language in § 261.5 (Special requirements for hazardous waste generated by conditionally exempt small quantity generators). These revisions will clarify the types of acceptable treatment, storage, or disposal facilities that can be used to manage CESQG hazardous waste while making it clear that CESQGs are responsible for ensuring that their CESQG hazardous wastes destined for storage, treatment, or disposal are sent to acceptable facilities. This will help ensure that CESQG waste is not sent to facilities that do not meet the new part 257 regulations (i.e., to facilities that ''may not receive'' CESQG waste. Acceptable facilities are either interim status or permitted Subtitle C facilities; municipal solid waste facilities permitted, licensed, or registered by a State and subject to part 258 or an approved State program; non-municipal solid waste disposal facilities that are permitted, licensed, or registered by a State and subject to the new part 257 regulations or an approved State program; or solid waste management facilities that are permitted, licensed, or registered by a State (i.e., municipal solid waste combustor). EPA encourages CESQGs to consult with their State solid waste agency to determine which facilities are acceptable. Today's proposed changes to § 261.5 make no changes to the provisions allowing CESQGs to send their hazardous waste for beneficial use, reuse, legitimate recycling or reclamation.

D. Request for Comment on the Use of an Alternative Regulatory Approach in Today's Rule

The Agency previously discussed its proposed approach to impose only the statutory minimum requirements on non-municipal solid waste facilities that receive CESQG hazardous waste. The Agency has identified two options for writing the statutory minimum components. One option is to use the part 258 Criteria as the baseline for these requirements. The second option would be to specify general performance standards to be met by facility owners/operators as they implement the standards as well as to guide States in designing new regulatory programs (or revising existing regulatory programs).

There are several reasons why the Agency is considering using the part 258 Criteria. (1) Part 258 Criteria provide sufficient detail so that an individual owner/operator can self-implement them without State interaction in those instances where States do not seek approval of their permitting program as required in RCRA section 4005(c). (2) EPA believes that the national minimum requirements are necessary to collect reliable and consistent ground-water monitoring data and to respond to contamination from the unit. (3) They contain a substantial amount of flexibility that allows approved States to tailor standards to individual and classes of facilities. Also, EPA and State success in accomplishing 42 State program approvals demonstrates that a variety of State approaches are consistent with the part 258 Criteria. As an example, States have established different design standards based on State-specific or site-specific factors that comply with the part 258 criteria. The Agency expects States to likewise use this same flexibility in tailoring their ground-water monitoring programs. (4) Some States have expressed strong support for using 258 standards as the baseline for solid waste disposal facilities that receive CESQG hazardous waste. (5) While some States have standards for non-municipal facilities that are not identical to the 258 standards, the Agency believes there is a strong likelihood that many state programs would be approvable.

Reasons cited in support of using the general performance standard approach include: (1) Although the part 258 standards contain substantial flexibility for States to tailor the programs to their conditions, the part 258 standards put certain limits on State flexibility to design a program tailored to local conditions; (2) The part 258 standards also include certain national minimum requirements (which States can not modify) that EPA promulgated because of the risks posed by MSWLFs. However, since EPA has found that facilities that receive CESQG waste may pose substantially less risk than MSWLFs, these national minimum standards may be overly stringent at certain facilities; (3) In the absence of a significant Federal program, over half of the States have adopted location standards, ground-water monitoring requirements, and corrective action requirements that are significantly less extensive than the part 258 standards. If a State believes that its existing program satisfies the general RCRA performance standard—protects human health and the environment, taking into account the practicable capability of these facilities—it could seek approval of their existing programs and avoid substantial regulatory or legislative changes; and (4) a general performance standard would provide the maximum flexibility for States and owners to adopt new methodologies and technologies (e.g., detecting groundwater contamination from the

surface, not from wells) to meet the standard at the lowest possible cost.

In order to give the regulated community a better idea of how the ground-water monitoring and corrective action requirements could be written using a general performance standard approach, the Agency has developed the following examples of general performance language for each of the main elements of a ground-water and corrective action program.

For § 257.22, ground-water monitoring systems, the regulatory language for the general performance approach could require that the owner/operator install a ground-water monitoring system capable of detecting contamination that would consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water monitoring samples from the uppermost aquifer that represent both the quality of background ground-water and the quality of ground-water passing the point of compliance. However, this section would not specify how the monitoring wells should be cased or the proper depth and spacing of the wells. The part 258 approach establishes the point of compliance for units under today's proposed rulemaking to no more than 150 meters from the edge of a unit boundary. However, a general performance standard could be written to allow states to set the point of compliance at other protective locations. The Agency specifically requests comment on whether a flexible approach to establishing the point of compliance is particularly well suited to low-risk facilities such as those addressed by this rulemaking, and if so, which factors should be considered in making a determination at these facilities.

The Agency also is currently evaluating a performance-based approach to locating the point of compliance for clean-up of releases in the hazardous waste program as part of the corrective action rule development in subpart S of 40 CFR part 264. The states are participating in the subpart S rulemaking as co-regulators. Point of compliance options under consideration include: The unit boundary, the facility boundary, use of a buffer zone and anywhere in the plume of contamination beyond the unit boundary. We are contemplating that the subpart S approach could provide a basis for flexible, site-specific decision making for waste management facilities covered by today's rule.

For § 257.23, ground-water sampling and analysis requirements, the regulatory language for the general performance language could require that the owner/operator establish a ground-water monitoring program that includes consistent sampling and analysis procedures that ensure monitoring results that provide an accurate representation of background ground-water quality and down-gradient ground-water quality. The Agency would also state that the sampling and analysis procedures should also ensure that appropriate sampling and analytical methods are used and that ground-water quality data is based on appropriate statistical procedures. However, the regulatory language would not require that any specific statistical test be used nor would the regulatory language require that general performance standards be met as a condition of using an alternative statistical test.

For § 257.24, detection monitoring program, the regulatory language for the general performance language could require that the owner/operator establish a list of indicator or detection parameters that are monitored for and that enable the owner/operator to detect contamination. The Agency would also state that the monitoring frequency should be determined based on site specific factors and that the owner/operator must also establish a process for assessing any potential contamination, based on the statistical procedures established in § 257.23. However, EPA's regulatory language would not specify any factors that an owner/operator should consider in selecting his/her indicator/detection monitoring parameters nor would the regulatory language specify the site-specific factors that would need to be evaluated by the owner/operator in determining the frequency of monitoring.

For § 257.25, assessment monitoring program, the regulatory language for the general performance standard approach could require that the owner/operator establish a process for assessing any potential contamination based on (1) additional monitoring for hazardous constituents that are expected to be present at the facility and (2) the establishment of background standards and health-based standards for the constituents that are monitored. The Agency would also state that the process must allow for a comparison, based on the statistical procedures established in § 257.23, of those background and health-based standards in order to determine when a health-based standard has been exceeded and to allow for the assessment of corrective measures when it is determined that an exceedance has occurred. However, the regulatory language would not specify any steps that must be complied with as part of the process in assessing the monitoring program.

For § 257.26, assessment of corrective action, the regulatory language for the general performance standard approach could require that the owner/operator assess the potential range of corrective measures that could be used to meet the performance standard established in § 257.27. However, the regulatory language would not list any factors that should be considered by the owner/operator in assessing any potential remedy. It may allow the States flexibility to use a different risk assumption than those in part 258 to establish triggers for corrective action.

For § 257.27, selection of remedy, the regulatory language for the general performance standard approach could require that the owner/operator select the most appropriate remedy that (1) controls the source of releases to the maximum extent possible, (2) attains the health-based standard(s) developed in the assessment monitoring program, and (3) protects human health and the environment. The Agency would also state that the owner/operator would also need to establish a time period for initiating and completing the selected remedy. However, the regulatory language would not list any factors that an owner/operator should consider in selecting the remedy, in establishing a schedule for initiating and completing the remedy, or in deciding that remediation is not necessary.

For § 257.28, implementation of the corrective action program, the regulatory language for the general performance standard approach could require that the owner/operator implement the selected remedy, based on the schedule established in § 257.27, and attain compliance with the health-based standards established in § 257.25. The Agency would also state that the implementation of the corrective action program should include a consideration of interim measures that may need to be considered during corrective action and a consideration of alternative corrective measures if, after implementation of the selected remedy, the health-based standards in § 257.25 are not being achieved. However, the regulatory language would not list any factors that an owner/operator should consider in developing interim measures or in the selection of an alternative remedy.

The Agency believes that the general performance standard approach has some advantages. The approach would offer more flexibility to States to determine how best to run their State program for non-municipal solid waste facilities that receive CESQG hazardous waste, while allowing States to tailor

regulations based on anticipated risks. In the absence of a State program, owners/operators would have to determine how to comply based on risk. However, the Agency is concerned that such a performance standard approach may result in greater uncertainty for owners/operators.

While the Agency has not proposed the general performance standard approach in today's proposal, the Agency believes that the performance standard approach provides some interesting options/advantages for owners/operators and State agencies. Therefore, the Agency is requesting comments on the use of general performance standards in lieu of the approach used in today's proposal.

E. Highlights of Today's Statutory Minimum Requirements for Non-Municipal Solid Waste Disposal Facilities That May Receive CESQG Hazardous Waste

For today's proposed regulatory language, the Agency has used the part 258 Criteria as a baseline. The highlights of the part 258 requirements are presented in this section of today's preamble. The flexibility that was developed for the part 258 Criteria has been incorporated into today's proposal for the location restrictions and the ground-water monitoring and corrective action requirements. The Agency solicits comments from the regulated community on whether these standards would provide sufficient flexibility for construction and demolition waste facilities. Commentors are requested to review the proposal with an eye towards identifying those areas in the proposal that they believe do not contain sufficient flexibility and would unduly hinder or place unnecessary burdens on construction and demolition waste facilities or other facilities potentially affected by the rule. The Agency requests that if commentors identify a provision that is lacking in flexibility, that the commentors clearly identify alternative rule language that provides the necessary flexibility.

1. Applicability and Effective Date

Today's proposal establishes new sections in part 257 (i.e., §§ 257.5 through 257.30) that apply to any non-municipal solid waste disposal facility that receives CESQG hazardous wastes. Today's proposal does not apply to municipal solid waste landfills subject to part 258 or hazardous waste facilities subject to regulations under Subtitle C of RCRA.

Owners/operators of non-municipal solid waste disposal facilities whose facilities do not meet the proposed requirements may not receive CESQG hazardous waste. Owners/operators of such facilities would continue to be subject to the requirements in §§ 257.1–257.4.

Owners/operators of non-municipal solid waste disposal facilities that receive CESQG hazardous waste after the effective date (i.e., 18 months after the date of publication of the final rule in the **Federal Register**) must comply with the requirements in §§ 257.5 through 257.30.

Certain facilities may implement screening procedures to effectively eliminate the receipt of CESQG hazardous wastes. If an owner/operator has a question concerning applicability of the rule, he/she is encouraged to contact his/her State Agency to determine that the screening procedure ensures that the facility does not receive CESQG hazardous waste.

2. Existing Part 257 Requirements

All types of non-hazardous waste facilities, except municipal solid waste landfills, must comply with the current requirements in 40 CFR part 257. In developing today's proposal for non-municipal solid waste disposal facilities that receive CESQG wastes, the Agency decided to retain some of the existing part 257 requirements. Owners/operators of non-municipal solid waste disposal facilities that receive CESQG hazardous waste continue to be subject to the following existing requirements in §§ 257.1–257.4: §§ 257.3–2 (Endangered Species), 257.3–3 (Surface Water), 257.3–5 (Application to food-chain crops), 257.3–6 (Disease), 257.3–7 (Air), and 257.3–8 (a), (b), and (d) (Safety). The Agency saw no reason to eliminate these requirements because non-municipal solid waste facilities have been subject to these requirements since 1979. A non-municipal solid waste disposal facility that becomes subject to the CESQG requirements in §§ 257.5 through 257.30 would no longer be subject to the following existing requirements in §§ 257.1–257.4: §§ 257.3–1 (Floodplains), 257.3–4 (Ground water), and 257.3–8(c) (bird hazards to aircraft) because §§ 257.5 through 257.30 would contain separate standards for each of these areas.

As stated earlier, RCRA section 4010 requires that the Agency establish revised Criteria for non-municipal solid waste disposal facilities that receive CESQG wastes that include, at a minimum, ground-water monitoring, corrective action, and location restrictions. These requirements have been included in new §§ 257.5 through 257.30. Each of these requirements is discussed below and in more detail in Reference #1.

3. Specific Location Restrictions

The requirements in §§ 257.7 through 257.12 will establish location restrictions for any non-municipal solid waste disposal facility that receives CESQG hazardous wastes. The location restrictions are for airport safety, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas. The location restrictions being proposed today for non-municipal solid waste disposal facilities that receive CESQG hazardous wastes are identical to the location restrictions that were promulgated under Part 258 for municipal solid waste landfills. A detailed discussion of the municipal solid waste landfill location restrictions can be found at 56 FR 51042–51049 and in reference #1.

a. Airport Safety

Today's Proposed Language Regarding Airport Safety (§ 257.7)

Today's proposal uses the identical airport safety language that was established for MSWLFs. Today's proposal will require that new, existing, and lateral expansions of non-municipal solid waste disposal facilities that receive CESQG hazardous waste demonstrate that the facility does not pose a bird hazard to aircraft. For existing facilities that become subject to today's rule, only the demonstration requirement is different from the current airport safety standard in § 257.3–8(c). The demonstration requirement is being proposed because today's airport safety requirement is written to be self-implementing and the demonstration documents compliance and may protect the owner/operator from a citizen suit. For new and lateral expansions of non-municipal solid waste disposal facilities, the notification to the FAA and the affected airport is a new provision. This provision is being proposed in order for the Agency to be consistent with existing FAA Order #5200.5A (see Reference #9—page 51043). This FAA Order establishes that any disposal site that attracts or sustains hazardous bird movements from feeding, watering or roosting areas may be incompatible with airport operations.

b. Floodplains

Today's Proposed Language Regarding Floodplains (§ 257.8)

Today's proposal uses the identical language from the MSWLF Criteria. The demonstration requirement for new, existing, and lateral expansions of non-municipal solid waste disposal facilities

is the only change to the existing part 257 language and is being proposed due to the self-implementing nature of today's proposal and to document compliance on the part of the owner/operator.

c. Wetlands

Today's Proposed Language Regarding Wetlands (§ 257.9)

Today's proposal establishes requirements applicable for new and lateral expansions of non-municipal solid waste disposal facilities regarding the siting in wetland locations. These requirements are identical to the requirements established for MSWLFs. The Agency has determined that new and lateral expansions of non-municipal solid waste disposal facilities, similar to MSWLFs, may be sited in wetlands only under very certain conditions. Therefore, the demonstration requirements that are in the MSWLF Criteria are being proposed today. These demonstration requirements will ensure that if a non-municipal solid waste disposal facility needs to be located in a wetland, protection of State water quality standards and protection of the wetland will be achieved. Furthermore, today's proposal is consistent with the Agency's goal of achieving no net loss of the nation's wetlands.

d. Fault Areas

Today's Proposed Language Regarding Fault Areas (§ 257.10)

Today's proposal for non-municipal solid waste disposal facilities that receive CESQG hazardous waste contains a location restriction regarding fault areas. These requirements are identical to the requirements established for MSWLFs. Today's proposal bans the siting of new non-municipal solid waste disposal facilities or lateral expansions of these facilities in areas that are susceptible to faulting (i.e., areas located within 200 feet of a fault that has had displacement in recent times) based on the fault area provision established in part 258. The Agency believes that locating a new facility or lateral expansion in a location that has experienced faulting has inherent dangers. If a facility is located near a fault and displacement occurs, release of solid waste and hazardous constituents will occur. The Agency, however, believes that some flexibility should be incorporated into the proposal for approved States and, as such, today's proposal allows approved States to site a new non-municipal solid waste disposal facility or lateral expansion within 200 feet of an active fault if the owner/operator demonstrates that such an action will be protective of human health and the environment. Existing non-municipal solid waste disposal facilities that receive CESQG hazardous wastes would not be subject to today's proposed fault area restriction.

The Agency requests comments on the necessity of requiring a fault area restriction for new non-municipal solid waste disposal facilities or lateral expansions of these types of facilities that receive CESQG hazardous waste.

e. Seismic Impact Zones

Today's Proposed Language Regarding Seismic Impact Zones (§ 257.11)

Today's proposal for non-municipal solid waste disposal facilities that receive CESQG hazardous waste contains a location restriction regarding seismic impact zones. These requirements are identical to the requirements established for MSWLFs. Today's proposal bans the siting of new non-municipal solid waste disposal facilities or lateral expansions of these facilities in seismic impact zones based on the seismic impact zone provision in part 258. Existing non-municipal solid waste disposal facilities that receive CESQG hazardous wastes would not be subject to today's proposed seismic zone restriction. Seismic activity manifests itself in the form of ground shaking and fracturing. These activities can, like faulting, result in the release of solid waste and hazardous constituents. The Agency has incorporated the flexibility found in the MSWLF Criteria in today's proposal. As such, if owners/operators of new non-municipal solid waste disposal facilities that receive CESQG hazardous waste or lateral expansions of such facilities can demonstrate to the Director of an approved State that the facility and any containment devices used in the construction of the facility are designed to withstand the effects of seismic activity, then such a facility may be located in a seismic impact zone.

f. Unstable Areas

Today's Proposed Language Regarding Unstable Areas (§ 257.12)

Today's proposal for non-municipal solid waste disposal facilities that receive CESQG hazardous waste contains a location restriction regarding unstable areas. These requirements are identical to the requirements established for MSWLFs. Today's proposal applies to existing non-municipal solid waste facilities, new non-municipal solid waste facilities, and lateral expansions of these types of facilities and is based on the unstable area provision in part 258. These facilities that receive CESQG waste must demonstrate that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components will not be disrupted. The rationale for requiring this location restriction is the same as that provided for fault areas and seismic activity zones: Waste placed in locations susceptible to mass movement or placed in areas with poor foundation conditions can result in the release of solid waste and hazardous constituents. The Agency, therefore, believes that these unstable areas should be avoided and locating in an unstable area should only be allowed after a successful demonstration by the owner/operator that the structural integrity of the facility will not be disrupted.

In summary, six location restrictions are being proposed: airport safety, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas. Existing non-municipal solid waste disposal facilities that receive CESQG hazardous wastes are only required to comply with the airport safety, floodplain, and unstable area location restrictions. New or lateral expansions of non-municipal solid waste disposal facilities that receive CESQG hazardous wastes must comply with all six location restrictions prior to accepting waste for disposal.

EPA is proposing that existing non-municipal solid waste disposal facilities that cannot make the required demonstrations pertaining to airports, floodplains, or unstable areas by 18 months after publication of the final rule must stop receiving CESQG hazardous wastes. This 18-month period is much shorter than the 5-year period that was given to MSWLFs under 40 CFR 258.16. EPA provided five years to MSWLFs because there was concern about capacity shortages if existing owners/operators of MSWLFs had to close in the short term. For this proposal, existing non-municipal solid waste disposal facilities only have to comply with three location restrictions: airport safety, floodplains, and unstable areas. Two of these three restrictions being proposed are technically identical to the existing Part 257 standards that existing non-municipal solid waste disposal facilities have been subject to since 1979 (i.e., airport safety and floodplains). The new requirements for these two location restrictions are the demonstrations documenting compliance with these provisions and a notification to the FAA if a new or lateral expansion of an existing non-municipal solid waste disposal facility wants to site within a five-mile radius

of an airport runway end. The last location restriction applicable to existing facilities is the unstable area restriction. The Agency believes that 18 months is sufficient time for a owner/operator to demonstrate that the integrity of the facility will not be disrupted. Furthermore, the Agency does not believe that capacity concerns apply to the types of facilities that may potentially become subject to today's proposal.

With the effective date 18 months after the date of publication of the final rule, existing non-municipal solid waste disposal facilities that receive CESQG hazardous waste will need to make the necessary demonstrations during this 18-month period. In the event that an existing non-municipal solid waste facility can not make the demonstrations, the existing facility may not receive CESQG hazardous wastes after this 18-month period. If the existing non-municipal solid waste disposal facility fails to make the necessary demonstrations within 18 months and thereafter stops receiving CESQG hazardous waste, it can continue to stay open and operate; however, it must comply with the existing standards in §§ 257.1–257.4 vs. the requirements being proposed today in §§ 257.5 through 257.30.

3. Specific Ground-Water Monitoring and Corrective Action Requirements

The requirements in §§ 257.21–257.28 will establish ground water monitoring and corrective action requirements for any non-municipal solid waste disposal facility that receives CESQG hazardous wastes. Sections 257.21 through 257.28 establish the criteria for determining an acceptable ground-water monitoring system, the procedures for sampling and analyzing ground-water samples, the steps and factors to be used in proceeding from an initial detection monitoring phase, up to, and including corrective action for clean-up of contaminated ground water.

As stated earlier, the ground-water monitoring and corrective action requirements being proposed today for non-municipal solid waste disposal facilities that receive CESQG hazardous wastes are based on the ground-water monitoring and corrective action requirements that were promulgated under part 258 for municipal solid waste landfills. As such the areas of flexibility that exist within the MSWLF Criteria will also apply to non-municipal solid waste disposal facilities that receive CESQG hazardous waste. A detailed discussion of the MSWLF Criteria regarding ground-water monitoring and corrective action requirements can be found at 56 *FR* 51061–51093 and in reference #1.

Today's proposal is substantively identical to the Part 258 MSWLF Criteria. The two areas of difference concern when the ground-water and corrective action requirements become effective and the time period during which ground-water monitoring must be conducted after the active life of the facility. A summary of the applicability of the ground-water monitoring and corrective action requirements and each provision is presented below.

a. Applicability of Ground-water and Corrective Action Requirements

Today's Proposed Language Regarding Applicability of the Ground-Water Monitoring and Corrective Action Requirements (§ 257.21)

Today's proposal establishes ground-water monitoring and corrective action requirements (discussed separately below) for non-municipal solid waste disposal facilities that receive CESQG hazardous wastes. Existing non-municipal solid waste disposal facilities subject to this rule must be in compliance with the ground-water monitoring requirements within 2 years after the date of publication of the final rule. The Agency is proposing a shorter effective date for today's proposal than for the MSWLF Criteria because these ground-water requirements can be phased-in over a much shorter time frame.

The MSWLF Criteria were phased in over a three to five year period based on a lack of qualified well drillers. The Agency has decided on a two year effective date for a variety of reasons. First, 24 States prohibit hazardous waste from being managed in a construction/demolition waste facility (see Chapter 4 Reference #6). Construction and demolition waste disposal facilities in these 24 States will not be impacted because they, under State law, cannot receive hazardous waste. These 24 States account for 1060 of the approximate total of 1900 construction and demolition waste landfills. Further, 8 States require ground-water monitoring and corrective action that is similar to Part 258. These 8 States account for an additional 111 construction and demolition facilities. Therefore, a total of 1,171 construction and demolition waste facilities in 32 States will not be affected by this proposal. A total of 718 construction and demolition waste landfills in 17 States (New Hampshire has no construction and demolition landfills) will be affected after this proposal is finalized. Some States from the remaining 17 States have existing State regulations that allow them to impose ground-water monitoring requirements on a case-by-case basis. There are a total of 5 States that may impose ground-water monitoring requirements at their construction and demolition waste landfills (a total of 84 construction and demolition landfills exist in these 5 States). If only 718 construction and demolition waste owners/operators may have to have ground-water monitoring wells installed, the Agency believes that there are a sufficient number of firms that are qualified to install wells within 2 years.

The Agency is concerned that some States (3 States have a total of 491 construction and demolition waste landfills out of the 718 total that may be affected) may have difficulty in ensuring that all existing non-municipal solid waste disposal facilities that may receive CESQG waste have ground-water monitoring in place within 2 years and has allowed a one-year extension for an approved State. In an approved State, the Director can establish an alternative schedule that allows 50% of existing non-municipal solid waste disposal facilities to be in compliance within 2 years of the final rule and all non-municipal solid waste facilities that receive CESQG waste to be in compliance with the ground-water monitoring requirements within 3 years of the final rule. Similar to the MSWLF Criteria, today's proposal list a series of factors that the Director of an approved State should consider in establishing an alternative schedule.

Today's proposal establishes that the ground-water monitoring program must be conducted through the active life of the facility plus 30 years. Today's proposal does not contain provisions beyond the statutory minimum components and, therefore, no closure or post-closure care standards are being proposed. The Agency believes, however, that ground-water contamination resulting from the operation of a facility may not appear until after the active life of the facility. The Agency is therefore concerned that ground-water monitoring be conducted for some period of time after the active life of the facility. As such, today's proposal establishes the requirement that ground-water monitoring be conducted for 30 years after the active life. The term active life has also been changed from the definition in the MSWLF Criteria. Today's proposal defines active life to be the period of operation beginning with the initial receipt of solid waste and ending at the final receipt of solid waste. In the MSWLF Criteria the term active life was

defined to mean the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with § 258.60 (i.e., closure and post-closure care activities). The change in the definition of the term active life was necessary to reflect the fact that today's proposal does not contain closure or post-closure care requirements.

The Agency selected the 30 year continuance of ground-water monitoring after the final receipt of waste because 30 years is consistent with the period of time that ground-water monitoring is done after the final receipt of waste at MSWLFs. Following the approach that was selected for MSWLFs, the Agency has allowed the Director of an approved State to decrease or increase the 30 year period of time that ground-water monitoring must be done after the final receipt of waste. Any reduction in the period of time may be granted only after a demonstration by the owner/operator that a shorter period of time is sufficient to protect human health and the environment and the Director of an approved State approves such a demonstration.

The Agency requests comments on the 2-year effective date and the 30-year period of time after the active life that ground-water monitoring must be conducted. Commentors should submit data that supports a shorter or longer effective date and data concerning the necessity of the 30-year ground-water monitoring period.

The flexibility that an approved State/Tribal Director has in suspending the ground-water monitoring requirements for MSWLFs has been provided for non-municipal solid waste disposal facilities that receive CESQG hazardous waste in today's proposal (Reference #9, 56 FR 51061–51062). The provision is proposed for the same reason that it was finalized in the MSWLF Criteria. The Agency believes that certain hydrogeologic settings may preclude the migration of hazardous constituents from the non-municipal solid waste disposal facility to the ground-water. This provision is in the applicability section of today's ground-water monitoring requirements.

The Agency is also proposing to provide to approved States the flexibility to determine alternative ground-water monitoring requirements for small, dry non-municipal solid waste disposal facilities that receive CESQG waste. The Agency had previously issued an exemption to small, dry municipal solid waste landfills from some of the requirements in the MSWLF Criteria (Reference #9, 56 FR 50989–50991). Although the D.C. Circuit vacated this exemption in the Sierra Club v. EPA opinion, 992 f.2d at 345, the Court left it to the Agency's discretion to allow for alternative types of ground-water monitoring based upon factors such as size, location, and climate. Concurrent with this proposal, the Agency is proposing that approved States be allowed to determine alternative ground-water monitoring requirements for small, dry MSWLFs. The Agency sees no reason to limit this flexibility to MSWLFs and, therefore, is proposing that approved States may allow alternative monitoring requirements for small, dry non-municipal solid waste disposal facilities that are receiving CESQG waste if the facilities meet the definition of small and dry proposed in § 257.21(i). Additional information concerning the alternative ground-water monitoring requirements for MSWLFs will be published soon in a FR notice.

In order to be considered small, the non-municipal solid waste disposal facility must dispose of less than 20 tons of non-municipal waste daily. The 20 tons per day is proposed in order to be consistent with the small landfill exemption under the municipal solid waste landfill Criteria. However, the Agency recognizes that the size distribution, potential risks, practical capability and other factors differ for these facilities. The Agency is accepting comments on whether this number should be different for non-municipal solid waste facilities.

b. Overall Performance of the Ground-Water Monitoring System

Today's Proposed Language Regarding Ground-Water Monitoring Systems (§ 257.22)

Today's proposal contains the same performance language in the MSWLF Criteria and, as such, will provide owners and operators a performance-based approach to establishment of a monitoring system that will ensure detection of contamination.

Today's proposal continues to allow State Directors the discretion to establish an alternative monitoring boundary and multi-unit monitoring. The establishment of an alternative boundary provides flexibility to owners/operators and in some cases can serve to reduce corrective action costs by allowing the owner/operator the advantage of a limited dilution and attenuation zone. The establishment of multi-unit monitoring allows for local conditions to be taken into account where individual monitoring systems cannot be established.

c. Ground-Water Sampling and Analysis Requirements

Today's Proposed Language Regarding Sampling and Analysis (§ 257.23)

Today's proposal contains the same sampling and analysis procedures that are in the MSWLF Criteria. The sampling and analysis requirements ensure accurate ground-water monitoring results and allow for an accurate representation of both the background ground-water quality and the quality of ground water at the monitoring wells placed downgradient from the facility. Owners/operators need to ensure that consistent sampling and analysis procedures are in place in order to determine if a statistically significant increase in the level of a constituent has occurred indicating the possibility of ground-water contamination.

In the promulgated Criteria for municipal solid waste landfills, the Agency required that ground-water samples not be field-filtered prior to laboratory analysis. (See § 258.53(b)). The preamble discussion for this requirement can be found at 56 FR 51074, October 9, 1991. The Agency has been actively working on the issue of sample filtration due to concerns expressed by some members of the scientific community. The Agency expects to issue, in the near future, a proposal addressing additional flexibility on this issue. This proposal would include any potential revision to the prohibition on field filtering as specified in proposed § 257.23. Thus, any rule language change to the part 258 Criteria on this issue will be addressed in the final rule language for non-municipal solid waste facilities that receive CESQG wastes.

d. Detection Monitoring Program

Today's Proposed Language Regarding Detection Monitoring Requirements (§ 257.24)

Today's proposal establishes the same series of steps for ground-water monitoring as developed in the MSWLF Criteria. The Agency believes that monitoring for a limited set of parameters and determining if there is a statistically significant increase for any of these parameters is an essential first step in evaluating the possibility of a release from a non-municipal solid waste disposal facility that receives CESQG wastes. Today's proposed detection monitoring program contains the same areas of flexibility that exist within the MSWLF Criteria. This flexibility can be used by the Director of an approved State to delete any parameter from appendix I (appendix I

of part 258) where the Director believes that the constituent is not expected to be in or derived from the waste in the unit. Furthermore, the Director of an approved State can establish an alternative list of inorganic indicator parameters for the metals in appendix I of part 258. Also, today's proposal allows the Director of an approved State to allow for annual ground-water monitoring vs. semiannual based on a series of factors spelled-out in the proposal.

e. Assessment Monitoring Program

Today's Proposed Language Regarding Assessment Monitoring Requirements (§ 257.25)

Today's proposal establishes the same assessment monitoring program as in the MSWLF Criteria. The assessment monitoring program is essential in that an owner/operator must determine what constituents have entered the ground water and understand the extent of the contaminated plume to develop an efficient and effective corrective action program. The purpose of assessment monitoring is to evaluate, rather than detect, contamination. The Agency believes that a second phase of monitoring is essential for evaluating the nature and extent of contamination. The Agency also believes that the flexibility that exists in the MSWLF Criteria is sufficient to deal with the types of non-municipal facilities that receive CESQG hazardous waste and has, therefore, retained all of the flexibility in today's proposal.

f. Corrective Action Program

Today's Proposed Language Regarding Corrective Action Program §§ 257.26–257.28)

Today's proposal establishes the same corrective action steps as in the MSWLF Criteria. The steps that have been proposed today are those that are necessary for a successful corrective action program. Today's proposal allows the owner/operator to successfully remediate a ground-water contamination problem in a swift manner yet provides flexibility for selecting and implementing the corrective remedy. The proposed language contains performance objectives that must be considered in the evaluation, selection, and implementation of a remedy. The Agency also believes that the flexibility that exists in the MSWLF Criteria is sufficient to deal with the types of non-municipal facilities that receive CESQG hazardous waste and has, therefore, retained all of the flexibility in today's proposal.

4. Recordkeeping requirements (§ 257.30)

Similar to the recordkeeping requirement contained in the MSWLF Criteria, today's proposal requires that owners/operators of non-municipal solid waste disposal facilities that receive CESQG waste maintain a historical record of the facility. EPA is proposing this requirement to ensure the availability of basic information that will demonstrate compliance with the remainder of today's proposed requirements. Owners/operators would be required to maintain location restriction demonstrations and ground-water monitoring demonstrations, certifications, findings, reports, test results and analytical data in today's proposed operating record.

The goal of today's proposal is to have the owner/operator maintain such demonstrations in a single location that is easily accessible. The Director of an approved State has the flexibility to establish alternative locations for recordkeeping and alternative schedules for recordkeeping and notification requirements.

F. Other Issues Relating to Today's Proposal

1. Owner/Operator Responsibility and Flexibility in Approved States

The regulatory structure of the part 258 MSWLF Criteria is based on an owner/operator achieving compliance through self-implementation with the various requirements while allowing approved States the flexibility to consider local conditions in setting appropriate alternative standards that still achieve compliance with the basic goal of the part 258 Criteria. This flexibility that exists for approved States under part 258 has been retained in today's proposal and can be used by approved States in determining facility specific requirements. Individual areas of flexibility have been discussed in the previous sections detailing today's location restrictions, ground-water monitoring and corrective action requirements.

Owners/operators, due to the self-implementing nature of this proposal, would be required to comply with the promulgated standards, as of the appropriate effective date, regardless of the status of the States approval determination. If an owner/operator is located in a State that has not been approved under Subtitle D, then the owner/operator would have to comply with the promulgated standards, without the benefit of the flexibility allowed to be granted by the Director of an approved State. Owners/operators of non-municipal solid waste disposal facilities located in approved States, that become subject to today's proposed requirements when finalized, may be subject to alternate requirements based on the approved State standards.

2. CESQG's Responsibilities Relating to the Revisions in § 261.5, Paragraphs (f) and (g)

Today's proposal would allow that CESQG waste go to either a hazardous waste facility, a reuse or recycling facility, a municipal solid waste landfill subject to part 258, a non-municipal solid waste disposal facility that is subject to the requirements being proposed in §§ 257.5 through 257.30 or a solid waste management facility that is permitted, licensed, or registered by a State to manage municipal or non-municipal waste. The Agency believes that it is appropriate to establish facility standards for non-municipal solid waste disposal facilities that receive CESQG waste while at the same time specifying acceptable disposal options that are available to CESQGs in order to ensure that their waste is properly managed. The Agency believes that proposing both regulatory changes together clarifies the obligations of both CESQGs and owners/operators of disposal facilities to ensure proper management of CESQG hazardous waste and will lead to better management of these wastes. By regulating the generators, as well as the receiving facilities, today's proposal also helps to fulfill the statutory mandate that only facilities meeting the location, ground-water monitoring, and corrective action requirements (i.e., §§ 257.5 through 257.30) ''may receive'' CESQG waste. See RCRA Section 4010(c).

The Agency does not believe that today's proposed change to § 261.5 will result in a larger obligation for any CESQG. The Agency knows that the majority of CESQG waste is managed off-site. For the CESQG waste managed off-site, recycling is the predominant form of management. The Agency assumes that for the small amount of CESQG waste that is currently being sent off-site to a MSWLF, no additional obligation would be imposed on a CESQG by today's proposal because the MSWLF where the CESQG waste is being sent is subject to part 258. For construction and demolition waste generators who wish to send their CESQG waste to a non-municipal solid waste disposal facility subject to the proposed requirements in §§ 257.5 through 257.30, the only additional obligation would be that associated with a phone call to the appropriate State Agency to determine if the non-

municipal solid waste disposal facility is subject to §§ 257.5 through 257.30 and thus could legally accept CESQG waste. Furthermore, as stated previously, some States require that disposal of CESQG waste occur only at permitted Subtitle C facilities and CESQGs in these States would not face any burden as a result of this rule due to the more stringent State standard that the CESQG is currently subject to. Today's proposal does not change the generator's obligation to first determine if the waste is hazardous and, secondly, to determine if the waste is below the quantity levels established for a CESQG. If a generator is a CESQG, today's proposal continues an existing obligation on the generator to ensure that acceptable management of the CESQG hazardous waste occurs.

A CESQG may elect to screen-out or segregate out the CESQG hazardous wastes from his non-hazardous waste and then manage the CESQG hazardous portion in a facility meeting the requirements of proposed § 261.5(f)(3) and (g)(3). The remaining non-hazardous waste is not subject to today's proposed §§ 257.5 through 257.30; however, it must be managed in a facility that complies with either the part 258 Criteria or the existing Criteria in §§ 257.1–257.4.

On the other hand, a CESQG may elect not to screen-out or segregate the CESQG hazardous waste preferring instead to leave it mixed with the mass of non-hazardous waste. If the CESQG elects this option, the entire mass of material must be managed in a Subtitle C facility or a Subtitle D facility that is subject to part 258 or the proposed requirements in §§ 257.5 through 257.30.

VI. Implementation and Enforcement

A. State Activities Under Subtitle C

1. Hazardous and Solid Waste Amendments to RCRA

Today's proposal changes the existing requirements in § 261.5, paragraphs (f)(3) and (g)(3) pertaining to the special requirements for CESQGs. Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibilities.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facility which the State was authorized to permit. When, new more stringent, Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in previously authorized States, including the issuance of permits and primary enforcement, until the State is granted HSWA authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA provisions apply in authorized States in the interim.

The amendments to § 261.5, paragraphs (f)(3) and (g)(3), are proposed pursuant to section 3001(d)(4) of RCRA, which is a provision added by HSWA. Therefore, the Agency is proposing to add the requirement to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of the preamble.

2. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt the § 261.5 rule change and the modification is approved by EPA. Because the rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 2003. (See § 271.24(c) and 57 FR 60129 (December 18, 1992)).

40 CFR 271.21(e)(2) provides that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadline by which the State must submit its application for approval for this proposed regulation will be determined by the date of publication of the final rule in accordance with § 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

EPA is aware that a number of States have more stringent requirements for the disposal of waste generated by CESQGs. In particular, some States do not allow the disposal of this waste into any Subtitle D landfill. For these States, today's proposed rule would clearly be considered less stringent than the applicable provisions in these States' authorized programs. Section 3009 of RCRA allows States to adopt or retain provisions that are more stringent than the Federal provisions. Therefore, regarding today's proposed rule, EPA believes that States which do not allow the disposal of wastes generated by CESQGs into Subtitle D landfills under their existing authorized Subtitle C program would not be required to revise their programs and obtain authorization for today's proposed rule. Of course this situation would only apply in those cases where a State is not changing its regulatory language. Further, the authorized State requirements in such States, since they would be more stringent than today's proposed rule, would continue to apply in that State, even though today's rule is proposed pursuant to HSWA authority.

For a State to not be required to submit an authorization revision application for today's proposed rule, the State must have provisions that are authorized by EPA and that are more stringent than all the provisions in the new Federal rule. For those States that would not be required to revise their authorization, EPA strongly encourages the State to inform their EPA Regional Office by letter that for this proposed rule, it is not required to submit a revision application pursuant to 40 CFR 271.21(e), because in accordance with RCRA section 3009 the authorized State provision currently in effect is more stringent than the requirements contained in today's proposed rule. Otherwise, EPA would conclude that a revised authorization application is required.

Other States with authorized RCRA programs may already have adopted requirements under State law similar to those in today's proposal. These State

regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Although revisions to 40 CFR parts 257 and 261 are being proposed, for the purpose of authorization under Subtitle C, only the proposed changes to § 261.5 would be assessed against the Federal program. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their applications. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

B. State Activities Under Subtitle D

States are the lead Agencies in implementing Subtitle D rules. The Agency intends to maintain the State's lead in implementing the Subtitle D program. RCRA requires States to adopt and implement, within 18 months of the publication of a final rule, a permit program or other system of prior approval and conditions to ensure that non-municipal solid waste disposal facilities comply with today's standards. EPA is required to determine whether States have developed adequate programs. States will need to review their existing programs to determine where their programs need to be upgraded and to complete program changes, if changes are necessary. The process that the Agency will use in evaluating the adequacy of State programs will be set forth in a separate rulemaking, the State/Tribal Permit Program Determination of Adequacy. For the purpose of determining adequacy and granting approval under Subtitle D, only the proposed technical changes in §§ 257.5 through 257.30 will be evaluated by the Agency. The State will need to meet other procedural and administrative requirements identified in the State/Tribal Permit Program Determination of Adequacy. The approval process to be used for non-municipal solid waste disposal facilities is the same process that the Agency used for determining the adequacy of State programs for the Municipal Solid Waste Landfill criteria. In States already approved for the part 258 MSWLF Criteria, changes required by this rulemaking will constitute a program revision.

The Agency believes that for many approved States, changes required by this rulemaking will affect the technical criteria only and should warrant limited changes to the approved application. For example, if non-municipal solid waste disposal facilities subject to this rule are already subject to an approved State MSWLF program (i.e., the non-municipal solid waste disposal facilities are currently subject to the part 258 location restrictions, ground-water monitoring, and corrective action), the State may only be required to submit documentation that the non-municipal solid waste disposal facilities are subject to their approved program. States are encouraged to contact their appropriate EPA Regional office to determine the specifics of the approval process.

In States that have not been approved for the MSWLF Criteria, these revisions can be incorporated into an application for overall program approval of part 258 and §§ 257.5 through 257.30. States that currently restrict CESQG disposal to Subtitle C facilities (and States that may choose to adopt that restriction) or approved States which currently restrict CESQG disposal to part 258 municipal solid waste landfills will not need to seek further EPA approval of their Subtitle D program. RCRA section 4005(c)(1)(B) requires States to adopt and implement permit programs to ensure that facilities which receive CESQG waste will comply with the revised Criteria promulgated under section 4010(c). However, the Agency sees no need for approved States that already require CESQG waste to be disposed of in either Subtitle C facilities or facilities subject to the part 258 MSWLF Criteria to adopt and implement a permit program based upon the standards being proposed today.

RCRA section 7004(b)(1) requires the Administrator and the States to encourage and provide for public participation in the development, revision, implementation, and enforcement of this regulation, and once it is promulgated, the State programs implemented to enforce it. EPA provides for public participation by seeking public comment on this proposal and its decisions on whether State programs are adequate under RCRA section 4005(c)(1)(c). In developing and implementing permit programs, States must provide for public participation in accordance with the provisions of 40 CFR part 256, subpart G.

C. Relationship Between Subtitle C and D

Today's proposal has an effective date of 18 months after publication of the final rule for the location restrictions with the ground-water monitoring and corrective action requirements becoming effective 2 years after the date of publication of the final rule. The Agency is proposing that the revisions to § 261.5(f)(3) and (g)(3) have the same effective date as the proposed changes in §§ 257.5 through 257.30 (i.e., 18 months after the date of publication of the final rule). Owners/operators of facilities that receive CESQG hazardous waste will be subject to the requirements in §§ 257.5 through 257.30. CESQGs will be subject to the proposed requirements in § 261.5. Today's proposed 18-month effective date coincides with the period of time that States have, under Subtitle D, to adopt and implement a program to ensure that owners/operators are in compliance with the proposed changes to §§ 257.5 through 257.30.

D. Enforcement

1. Hazardous Waste Enforcement

Today's proposal amends § 261.5, paragraphs (f)(3) and (g)(3), and as such any CESQG who mismanages their CESQG hazardous waste on-site or delivers the CESQG hazardous waste to an inappropriate Subtitle D facility becomes subject to the full set of Subtitle C hazardous waste regulations.

2. Subtitle D Enforcement

States that adopt programs meeting the standards in §§ 257.5 through 257.30 may enforce them in accordance with State authorities. Under RCRA section 7002, citizens may seek enforcement of the standards in §§ 257.5 through 257.30 independent of any State enforcement program. Section 7002 provides that any person may commence a civil action on his own behalf against any person who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order that has become effective pursuant to RCRA. Once the self-implementing provisions in §§ 257.5 through 257.30 become

effective, they constitute the basis for citizen enforcement. Federal enforcement by EPA can be done only in States that EPA has determined have inadequate programs. EPA has no enforcement authorities under Section 4005 in approved States. EPA does, however, retain enforcement authority under section 7003 to protect against imminent and substantial endangerment to health and the environment in all States. A more complete discussion of the Subtitle D enforcement issue can be found in the MSWLF Criteria.

VII. Executive Order No. 12866—Regulatory Impacts Analysis

Under Executive Order No. 12866, EPA must determine whether a new regulation is significant. A significant regulatory action is defined as an action likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of the Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

A. Cost Impacts

The Agency estimates that of the total 1900 construction and demolition waste facilities, 718 would be potentially affected. The national annual low-end cost is estimated to be $10.0M. This low-end cost assumes that all CESQG hazardous waste is separated at the point of generation for the construction industry. It assumes there will be no CESQG waste generated by the demolition industry. The CESQG portion is disposed of at hazardous waste facilities while the remaining non-hazardous waste portion is disposed of in non-upgraded construction and demolition waste facilities. The costs include the separation costs at the point of generation, costs of transporting/disposing the hazardous portion at a Subtitle C facility, and the costs of screening incoming wastes at all of the construction and demolition waste facilities. There are hundreds of thousands of construction and demolition sites active in the U.S. each year. EPA assumes that demolition rubble will not be CESQG waste and affected by this rule. Therefore, separation costs are likely to occur only at construction sites and the 3,742 industrial facilities with on-site non-hazardous waste landfills. The Agency requests comment on the labor and capital necessary to conduct separation at these facilities. The Agency also requests comment on how frequently CESQG hazardous waste is currently being separated at construction sites at these industrial facilities. In addition, the Agency requests comment on the transportation costs to bring small amounts of hazardous wastes from construction sites to a treatment and disposal facility.

The national annual high-end cost is estimated to be $47.0M. This high-end cost assumes that generators will not separate out CESQG waste from 30% of construction and demolition wastes and that this fraction will be sent to upgraded construction and demolition waste facilities that elect to comply with today's proposed requirements. Under this scenario, the Agency assumed that most medium to large size construction and demolition waste facilities (162) will upgrade. The costs include separation costs at the point of generation for waste not going to an upgraded landfill, costs of screening incoming wastes at 80% of the affected construction and demolition waste facilities which do not upgrade and costs for 20% of the affected construction and demolition wastes facilities to upgrade. Upgrade costs include ground-water monitoring and corrective action.

This rule allows States and individual owners/operators to choose among compliance options. States and owners/operators may determine that facility screening is a successful method to prevent the receipt of CESQG hazardous wastes. Other States and owners/operators may determine that upgrading is necessary or there is a market for upgraded landfill capacity for generators and, as such, some facilities may upgrade. If more States and owners/operators elect to use screening then the estimated cost of this proposal would be closer to the lower-bound estimate.

The full analysis that was used to determine the range of costs for this rulemaking is presented in the Cost and Economic Impact Analysis of the CESQG Rule.

B. Benefits

The Agency believes that the requirements being proposed for non-municipal solid waste disposal facilities will result in more Subtitle D facilities providing protection against ground-water contamination from the disposal of small amounts of hazardous waste. Today's action will force some non-municipal solid waste disposal facilities to either upgrade and install ground-water monitoring and perform corrective action if contamination is detected, or stop accepting hazardous waste. Today's action will also cause some generators of CESQG wastes to separate out these small quantities of hazardous waste and send them to more heavily regulated facilities (i.e., Subtitle C facilities or MSWLFs). These are the direct benefits of today's proposal, however, additional benefits will be realized due to this proposal.

Today's proposal will ensure that any ground-water contamination that is occurring at facilities that continue to accept small quantities of hazardous waste will be quickly detected and corrective action can be initiated sooner.

To the extent that existing non-municipal facilities that receive CESQG hazardous waste upgrade their facilities to include ground-water monitoring and to the extent that new facilities will be sited in acceptable areas with ground-water monitoring, public confidence in these types of facilities will be increased. Having public confidence increased would result in these types of facilities being easier to site in the future.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider ''small entities'' throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. The Agency believes that it is unlikely that any industry will face significant impacts under the low-end scenario.

To help mitigate these impacts, EPA is proposing the minimum regulatory requirements allowed under the statute (which are still protective of human health and the environment). As a result, EPA believes that the lower-

bound scenario, where demolition firms separate-out their CESQG waste and continue to send the non-hazardous portion to landfills not subject to the revised Part 257 standards, is the most likely scenario and that small entities will not be significantly impacted.

The Agency's full analysis of the impacts on small entities can be found in the Cost and Economic Impact Analysis of the CESQG Rule.

IX. Paperwork Reduction Act

The information collection requirements in today's proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork reduction Act, 44 U.S.C. 3501 et seq. Submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB comments or public comments on the information collection requirements.

X. Environmental Justice Issues

Executive Order 12898 requires Federal Agencies, to the greatest extent practicable, to identify and address disproportionately high adverse human health or environmental effects of its activities on minority and low-income populations.

The Agency does not currently have data on the demographics of populations surrounding the facilities affected by today's proposal (i.e., construction and demolition landfills). The Agency does not believe, however, that today's proposed rule will adversely impact minority or low-income populations. The facilities affected by the proposal currently pose limited risk to surrounding populations (see section V.B.1.d of today's preamble). In addition, today's proposal would further reduce this risk by requiring the affected facilities to either stop accepting CESQG hazardous waste or to begin ground-water monitoring and, if applicable, corrective action.

Thus, today's proposal would further reduce the already low risk for populations surrounding construction and demolition landfills, regardless of the population's ethnicity or income level. Minority and low-income populations would not be adversely affected.

XI. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Pub. L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that the proposal discussed in this notice does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector, in any one year. EPA has estimated that the annual costs of the proposed rule on generators of CESQG wastes and those entities which own or operate CESQG disposal facilities, including the private sector, States, local or tribal governments, range from $10.0M to $47.0M.

In addition to compliance costs for those who own or operate CESQG facilities, States will have a cost of developing permit programs or other systems of prior approval to ensure that CESQG facilities comply with the proposal, once it is promulgated. Adoption and implementation of such State permit programs is required under RCRA section 4005(c)(1)(B). 42 USC 6945(c)(1)(B). Forty-two states already have adopted and implemented permit programs to ensure compliance with the MSWLF rule (40 CFR part 258) which EPA has approved as ''adequate.'' The Agency has estimated that the costs for a state to develop an application for approval of an MSWLF permit program to be approximately $15,000. Because these state permit programs already contain ground water monitoring, corrective action, and location standards for MSWLFs that are quite similar to those in this proposal, EPA believes that the additional costs for states to revise their permit programs to reflect the CESQG requirements are not expected to be significant. Also, because of the reduced level of regulatory requirements contained in this CESQG proposal as compared to the MSWLF Part 258 criteria, state costs for preparing applications for approval of a CESQG permit program should be considerably less than that $15,000 figure.

Indian tribes are not required to develop permit programs for approval by EPA, but the Agency believes tribal governments are authorized to development such permit programs and have them approved by EPA. EPA has estimated that it will cost a tribal government approximately $7,000 to prepare an application for approval of a MSWLF program. Because of the reduced regulatory provisions of the CESQG proposal, EPA expects that the costs which a tribal government might face in developing a permit program for CESQG facilities should be less than $7,000.

EPA is also proposing to revise the requirements for generators of CESQG hazardous waste. These amendments to 40 CFR 261.5 (f)(3) and (g)(3) are proposed pursuant to RCRA section 3001 (d)(4), which is a provision added by HSWA. The § 261.5 amendments are also more stringent than current Federal hazardous waste regulations. Subtitle C regulatory changes carried out under HSWA authority become effective in all states at the same time and are implemented by EPA until states revise their programs. States are obligated to revise their hazardous waste programs and seek EPA authorization of these program revisions, unless their programs already incorporate more stringent provisions. The Agency believes approximately 24 states already have more stringent CESQG hazardous waste provisions and would not have to take action because of these regulatory changes. About 26 states would have to revise their hazardous waste programs and seek authorization. States generally incorporate a number of hazardous waste program revisions and seek authorization for them at one time. The Agency estimates the State costs associated with Subtitle C program revision/authorization activity are approximately $7,320 per state. Since this estimate covers several separate program components at one time, the cost for revisions only to § 261.5 in the remaining 26 States would be substantially less.

As to section 203 of the Act, EPA has determined that the requirements being proposed today will not significantly or uniquely affect small governments, including tribal governments. EPA

recognizes that small governments may own or operate solid waste disposal facilities that receive CESQG waste. However, EPA currently estimates that the majority of construction and demolition landfills, which are the primary facilities likely to be subject to any final rule, are owned by the private sector. Moreover, EPA is aware that a number of states already require owners/operators of C&D landfills to meet regulatory standards that are similar to those being proposed today. Thus, EPA believes that the proposed rule contains no regulatory requirements that significantly or uniquely affect small governments.

EPA has, however, sought meaningful and timely input from the private sector, states, and small governments on the development of this notice. Prior to issuing this proposed rule, EPA met with members of the private sector as discussed earlier in the preamble. In addition, EPA met twice with an ''Industrial D'' Steering Committee of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) to discuss the contents of today's proposal. The Agency provided a draft of the proposed rule to the ASTSWMO Steering Committee and incorporated comments that were received.

Finally, included in this proposal is a provision that would allow certain small CESQG landfills which are located in either arid or remote locations and which service small communities to utilize alternative methods of ground water monitoring. Prior to developing this provision, which is also being proposed in a separate notice applicable to small MSWLF facilities that are in arid or remote locations, EPA held a series of public meetings. These meetings were held in June 1994 in Texas, Utah, Alaska, and Washington, DC. EPA received comment from a variety of parties, including States and small governments. Through these meetings and publication of this notice, EPA expects that any applicable requirements of section 203 of the Act will have been satisfied prior to promulgating a final rule.

XII. References

1. Background Document for the CESQG Rule, U.S. EPA, 1995

2. Generation and Management of CESQG Waste, U.S. EPA, Office of Solid Waste, Prepared by ICF, July 1994.

3. Screening Survey of Industrial Subtitle D Establishments, Draft Final Report, U.S. EPA, Office of Solid Waste, Prepared by Westat, December 29, 1987.

4. Construction Waste and Demolition Debris Recycling . . . A Primer, The Solid Waste Association of North America (SWANA), October 1993, Publication #: GR-REC 300

5. List of Industrial Waste Landfills and Construction and Demolition Waste Landfills, U.S. EPA, Office of Solid Waste, Prepared by Eastern Research Group, September 30, 1994.

6. Construction and Demolition Waste Landfills, U.S. EPA, Office of Solid Waste, Prepared by ICF, May, 1995.

7. National Small Quantity Hazardous Waste Generator Survey, U.S. EPA, Office of Solid Waste, Prepared by Abt Associates, Inc., February 1985.

8. Damage Cases: Construction and Demolition Waste Landfills, U.S. EPA, Office of Solid Waste, Prepared by ICF, May, 1995.

9. Solid Waste Disposal Facility Criteria, 56 FR 50977, October 9, 1991

10. Cost and Economic Impact Analysis of the CESQG Rule, Prepared by ICF, 1995.

List of Subjects

40 CFR Part 257

Environmental protection, Reporting and recordkeeping requirements, Waste disposal.

40 CFR Part 261

Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 271

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

Dated: May 15, 1995.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

1. The authority citation for part 257 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a) and 6949(c), 33 U.S.C. 1345 (d) and (e).

2. Sections 257.1 through 257.4 are designated as Subpart A—Classification of Solid Waste Disposal Facilities and Practices.

3. Section 257.1, paragraph (a) is revised to read as follows:

§ 257.1 Scope and purpose.

(a) Unless otherwise provided, the criteria in §§ 257.1–257.4 are adopted for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act (The Act). Unless otherwise provided, the criteria in §§ 257.5–257.30 are adopted for purposes of ensuring that non-municipal solid waste disposal facilities that receive conditionally exempt small quantity generator (CESQG) waste do not present risks to human health and the environment taking into account the practicable capability of such facilities in accordance with section 4010(c) of the Act.

(1) Facilities failing to satisfy either the criteria in §§ 257.1–257.4 or §§ 257.5–257.30 are considered open dumps, which are prohibited under section 4005 of the Act.

(2) Practices failing to satisfy either the criteria in §§ 257.1–257.4 or §§ 257.5–257.30 constitute open dumping, which is prohibited under section 4005 of the Act.

* * * * *

4. Part 257 is amended by adding a new subpart B to read as follows:

Subpart B—Disposal Standards for the Receipt of Conditionally Exempt Small Quantity Generator (CESQG) Wastes at Non-Municipal Solid Waste Disposal Facilities

Sec.
257.5 Facility standards for owners/operators of non-municipal solid waste disposal facilities that receive Conditionally Exempt Small Quantity Generator (CESQG) waste.

Location Restrictions

257.7 Airport safety.
257.8 Floodplains.
257.9 Wetlands
257.10 Fault areas.
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257.12 Unstable areas.
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Ground-water Monitoring and Corrective Action

257.21 Applicability.
257.22 Ground-water monitoring systems.
257.23 Ground-water sampling and analysis requirements.
257.24 Detection monitoring program.
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257.26 Assessment of corrective measures.
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Recordkeeping Requirement

257.30 Recordkeeping requirements.

Supart B—Disposal Standards for the Receipt of Confidenfiality Exempt Small Generator (CESQG) Wastes at Non-Municpal Solid Waste Disposal Facilities

§ 257.5 Facility standards for owners/operators of non-municipal solid waste disposal facilities that receive Conditionally Exempt Small Quantity Generator (CESQG) waste.

(a) Applicability. (1) The requirements in this section apply to owners/operators of any non-municipal solid waste disposal facility that receives CESQG hazardous waste, as defined in 40 CFR 261.5. Any owner/operator of a non-municipal solid waste disposal facility that receives CESQG hazardous waste continues to be subject to the requirements in §§ 257.3–2, 257.3–3, 257.3–5, 257.3–6, 257.3–7, and 257.3–8 (a), (b), and (d).

(2) Any non-municipal solid waste disposal facility that does not meet the requirements in §§ 257.7 through 257.12 by [Insert date 18 months after date of publication of the final rule in the **Federal Register**] and the requirements in §§ 257.21 through 257.28 by [Insert date 24 months after date of publication of the final rule in the **Federal Register**] may not receive CESQG hazardous waste. Such a non-municipal solid waste disposal facility continues to be subject to the requirements in §§ 257.1–257.4.

(b) Definitions. Active life means the period of operation beginning with the initial receipt of solid waste and ending at the final receipt of solid waste.

Existing facility means any non-municipal solid waste disposal facility that is receiving CESQG hazardous waste as of the appropriate dates specified in § 257.5(a)(1).

Lateral expansion means a horizontal expansion of the waste boundaries of an existing non-municipal solid waste disposal facility.

New facility means any non-municipal solid waste disposal facility that has not received CESQG hazardous waste prior to [Insert date 18 months after date of publication of the final rule in the **Federal Register**].

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and Indian Tribes.

State/Tribal Director means the chief administrative officer of the State/Tribal agency responsible for implementing the State/Tribal permit program for Subtitle D regulated facilities.

Uppermost aquifer means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

Waste management unit boundary means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

Location Restrictions

§ 257.7 Airport Safety

(a) Owners or operators of new facilities, existing facilities, and lateral expansions that are located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used by only piston-type aircraft must demonstrate that the units are designed and operated so that the unit does not pose a bird hazard to aircraft.

(b) Owners or operators proposing to site new facilities and lateral expansions located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the Federal Aviation Administration (FAA).

(c) The owner or operator must place the demonstration in paragraph (a) of this section in the operating record and notify the State Director that it has been placed in the operating record.

(d) For purposes of this section:

(1) *Airport* means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(2) *Bird hazard* means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

§ 257.8 Floodplains.

(a) Owners or operators of new facilities, existing facilities, and lateral expansions located in 100-year floodplains must demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record.

(b) For purposes of this section:

(1) *Floodplain* means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(2) *100-year flood* means a flood that has a 1-percent or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(3) *Washout* means the carrying away of solid waste by waters of the base flood.

§ 257.9 Wetlands.

(a) Owners or operators of new facilities and lateral expansions shall not locate such facilities in wetlands, unless the owner or operator can make the following demonstrations to the Director of an approved State:

(1) Where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involved wetlands is clearly rebutted:

(2) The construction and operation of the MSWLF unit will not:

(i) Cause or contribute to violations of any applicable State water quality standard,

(ii) Violate any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act,

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973, and

(iv) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The facility will not cause or contribute to significant degradation of wetlands. The owner/operator must demonstrate the integrity of the facility and its ability to protect ecological resources by addressing the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the facility;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the facility;

(iii) The volume and chemical nature of the waste managed in the facility;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the waste;

(v) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or

applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (a)(1) of this section, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) For purposes of this section, wetlands means those areas that are defined in 40 CFR 232.2(r).

§ 257.10 Fault areas.

(a) Owners or operators of new facilities and lateral expansions shall not locate such facilities within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the Director of an approved State that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the facility and will be protective of human health and the environment.

(b) For the purposes of this section:

(1) *Fault* means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

(2) *Displacement* means the relative movement of any two sides of a fault measured in any direction.

(3) *Holocene* means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

§ 257.11 Seismic impact zones.

(a) Owners or operators of new facilities and lateral expansions shall not locate such facilities in seismic impact zones, unless the owner or operator demonstrates to the Director of an approved State that all containment structures are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record.

(b) For the purposes of this section:

(1) *Seismic impact zone* means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

(2) *Maximum horizontal acceleration in lithified earth material* means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(3) *Lithified earth material* means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

§ 257.12 Unstable areas.

(a) Owners or operators of new facilities, existing facilities, and lateral expansions located in an unstable area must demonstrate that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record. The owner or operator must consider the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features or events (both surface and subsurface).

(b) For purposes of this section:

(1) *Unstable area* means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terranes.

(2) *Structural components* means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the facility that is necessary for protection of human health and the environment.

(3) *Poor foundation conditions* means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of the facility.

(4) *Areas susceptible to mass movement* means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the facility, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

(5) *Karst terranes* means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

§ 257.13 Deadline for making demonstrations.

(a) Existing facilities that cannot make the demonstration specified in §§ 257.7(a) pertaining to airports, 257.8(a) pertaining to floodplains, or 257.12(a) pertaining to unstable areas by [Insert date 18 months after date of publication of the final rule in the **Federal Register**] must not accept CESQG hazardous waste for disposal.

Ground-Water Monitoring and Corrective Action

§ 257.21 Applicability.

(a) The requirements in this section apply to facilities identified in § 257.5(a), except as provided in paragraph (b) of this section.

(b) Ground-water monitoring requirements under §§ 257.22 through 257.25 may be suspended by the Director of an approved State for a facility identified in § 257.5(a) if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that facility to the uppermost aquifer during the active life of the unit plus 30 years. This demonstration must be certified by a qualified ground-water scientist and approved by the Director of an approved State, and must be based upon:

(1) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

(c) Owners and operators of facilities identified in § 257.5(a) must comply with the ground-water monitoring requirements of this section according to the following schedule unless an alternative schedule is specified under paragraph (d) of this section:

(1) Existing facilities and lateral expansions must be in compliance with the ground-water monitoring requirements specified in §§ 257.22–257.25 by [Insert date 2 years after date of publication of the final rule in the **Federal Register**]

(2) New facilities identified in § 257.5(a) must be in compliance with the ground-water monitoring requirements specified in §§ 257.22–257.25 before waste can be placed in the unit.

(d) The Director of an approved State may specify an alternative schedule for the owners or operators of existing facilities and lateral expansions to comply with the ground-water monitoring requirements specified in §§ 257.22–257.25. This schedule must ensure that 50 percent of all existing facilities are in compliance by [Insert date 2 years after date of publication of the final rule in the **Federal Register**] and all existing facilities are in compliance by [Insert date 3 years after date of publication of the final rule in the **Federal Register**]. In setting the compliance schedule, the Director of an approved State must consider potential risks posed by the unit to human health and the environment. The following factors should be considered in determining potential risk:

(1) Proximity of human and environmental receptors;

(2) Design of the unit;

(3) Age of the unit;

(4) The size of the unit;

(5) Resource value of the underlying aquifer, including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users; and

(iii) Ground-water quality and quantity.

(e) Once established at a facility, ground-water monitoring shall be conducted throughout the active life plus 30 years. The Director of an approved State may decrease the 30 year period if the owner/operator demonstrates that a shorter period of time is adequate to protect human health and the environment and the Director approves the demonstration.

(f) For the purposes of this section, a qualified ground-water scientist is a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by State registration, professional Certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding ground-water monitoring, contaminant fate and transport, and corrective-action.

(g) The Director of an approved State may establish alternative schedules for demonstrating compliance with § 257.22(d)(2), pertaining to notification of placement of certification in operating record; § 257.24(c)(1), pertaining to notification that statistically significant increase (SSI) notice is in operating record; § 257.24(c)(2) and (3), pertaining to an assessment monitoring program; § 257.25(b), pertaining to sampling and analyzing appendix II of Part 258 constituents; § 257.25(d)(1), pertaining to placement of notice (appendix II of Part 258 constituents detected) in record and notification of notice in record; § 257.25(d)(2), pertaining to sampling for appendix I and II of Part 258; § 257.25(g), pertaining to notification (and placement of notice in record) of SSI above ground-water protection standard; §§ 257.25(g)(1)(iv) and 257.26(a), pertaining to assessment of corrective measures; § 257.27(a), pertaining to selection of remedy and notification of placement in record; § 257.5–2.8(c)(4), pertaining to notification of placement in record (alternative corrective action measures); and § 257.28(f), pertaining to notification of placement in record (certification of remedy completed).

(h) Directors of approved States may allow any non-municipal solid waste disposal unit meeting the criteria in paragraph (i) of this section to:

(1) Use alternatives to the ground-water monitoring system prescribed in §§ 257.22 through 257.25 so long as the alternatives will detect and, if necessary, assess the nature or extent of contamination from the non-municipal solid waste disposal unit on a site-specific basis; or establish and use, on a site-specific basis, an alternative list of indicator parameters for some or all of the constituents listed in Appendix I (appendix I of part 258 of this chapter). Alternative indicator parameters approved by the Director of an approved State or Tribe under this section must ensure detection of contamination from the non-municipal solid waste disposal unit.

(2) If contamination is detected through the use of any alternative to the ground-water monitoring system prescribed in §§ 257.22 through 257.25, the non-municipal solid waste disposal unit owner or operator must perform expanded monitoring to determine whether the detected contamination is an actual release from the non-municipal solid waste disposal unit and, if so, to determine the nature and extent of the contamination. The non-municipal solid waste disposal unit owner or operator must submit the results from expanded monitoring to the Director of the approved State within 60 days from the time of detection.

(i) If detection indicates that contamination from the non-municipal solid waste disposal unit has reached the saturated zone, the owner or operator must install ground-water monitoring wells and sample these wells in accordance with §§ 257.22 through 257.25.

(ii) If detection indicates that contamination from the non-municipal solid waste disposal unit is present in the unsaturated zone or on the surface, the owner or operator must, within 60 days from the time expanded monitoring is completed, submit for approval by the Director of an approved State adequate corrective measures to prevent further contaminant migration, and where appropriate, to remediate contamination. The proposed corrective measures are subject to revision and approval by the Director of the approved State. The owner or operator must implement the corrective measures according to a schedule established by the Director of the approved State.

(3) When considering whether to allow alternatives to a ground-water monitoring system prescribed in §§ 257.22 through 257.25, including alternative indicator parameters, the Director of an approved State shall consider at least the following factors:

(i) The geological and hydrogeological characteristics of the site;

(ii) The impact of manmade and natural features on the effectiveness of an alternative technology;

(iii) Climatic factors that may influence the selection, use, and reliability of alternative ground-water monitoring procedures; and

(iv) the effectiveness of indicator parameters in detecting a release.

(4) The Director of an approved State can require an owner or operator to comply with the requirements of §§ 257.22 through 257.25, where it is determined by the Director that using alternatives to ground-water monitoring approved under this subsection are inadequate to detect contamination and,

if necessary, to assess the nature and extent of contamination.

(i) Directors of approved States can use the flexibility in paragraph (h) of this section for any non-municipal solid waste disposal facility that receives CESQG waste, if the non-municipal solid waste disposal facility:

(1) Disposes of less than 20 tons of non-municipal waste daily, based on an annual average, and,

(2) Has no evidence of ground-water contamination, and either,

(3) Serves a community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility, or

(4) Serves a community that has no practicable waste management alternative and the non-municipal solid waste disposal facility is located in an area that annually receives less than or equal to 25 inches of precipitation.

(5) Owners/operators of any non-municipal solid waste disposal facility that meets the criteria in paragraph (i) of this section must place in the operating record information demonstrating this.

§ 257.22 Ground-water monitoring systems.

(a) A ground-water monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water samples from the uppermost aquifer (as defined in § 257.21(b)) that:

(1) Represent the quality of background ground water that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background ground-water quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Represent the quality of ground water passing the relevant point of compliance specified by the Director of an approved State or at the waste management unit boundary in an unapproved State. The downgradient monitoring system must be installed at the relevant point of compliance specified by the Director of an approved State or at the waste management unit boundary in an unapproved State that ensures detection of ground-water contamination in the uppermost aquifer. The relevant point of compliance specified by the Director of an approved State shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the owner of the facility. In determining the relevant point of compliance the State Director shall consider at least the following factors: The hydrogeologic characteristics of the facility and surrounding land, the volume and physical and chemical characteristics of the leachate, the quantity, quality and direction of flow of ground water, the proximity and withdrawal rate of the ground-water users, the availability of alternative drinking water supplies, the existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water, public health, safety, and welfare effects, and practicable capability of the owner or operator. When physical obstacles preclude installation of ground-water monitoring wells at the relevant point of compliance at existing units, the down-gradient monitoring system may be installed at the closest practicable distance hydraulically down-gradient from the relevant point of compliance specified by the Director of an approved State that ensures detection of groundwater contamination in the uppermost aquifer.

(b) The Director of an approved State may approve a multi-unit ground-water monitoring system instead of separate ground-water monitoring systems for each unit when the facility has several units, provided the multi-unit ground-water monitoring system meets the requirement of § 257.22(a) and will be as protective of human health and the environment as individual monitoring systems for each unit, based on the following factors:

(1) Number, spacing, and orientation of the units;

(2) Hydrogeologic setting;

(3) Site history;

(4) Engineering design of the units, and

(5) Type of waste accepted at the units.

(c) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground-water samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the ground water.

(1) The owner or operator must notify the State Director that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record; and

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(d) The number, spacing, and depths of monitoring systems shall be:

(1) Determined based upon site-specific technical information that must include thorough characterization of:

(i) Aquifer thickness, ground-water flow rate, ground-water flow direction including seasonal and temporal fluctuations in ground-water flow; and

(ii) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: Thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

(2) Certified by a qualified ground-water scientist or approved by the Director of an approved State. Within 14 days of this certification, the owner or operator must notify the State Director that the certification has been placed in the operating record.

§ 257.23 Ground-water sampling and analysis requirements.

(a) The ground-water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells installed in compliance with § 257.22(a). The owner or operator must notify the State Director that the sampling and analysis program documentation has been placed in the operating record and the program must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

(b) The ground-water monitoring program must include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground-water samples. Ground-water samples shall not be field-filtered prior to laboratory analysis.

(c) The sampling procedures and frequency must be protective of human health and the environment.

(d) Ground-water elevations must be measured in each well immediately prior to purging, each time ground water is sampled. The owner or operator must determine the rate and direction of ground-water flow each time ground water is sampled. Ground-water elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow rate and direction.

(e) The owner or operator must establish background ground-water quality in a hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular ground-water monitoring program that applies to the unit, as determined under § 257.24(a), or § 257.25(a). Background ground-water quality may be established at wells that are not located hydraulically upgradient from the unit if it meets the requirements of § 257.22(a)(1).

(f) The number of samples collected to establish ground-water quality data must be consistent with the appropriate statistical procedures determined pursuant to paragraph (g) of this section. The sampling procedures shall be those specified under § 257.24(b) for detection monitoring, § 257.25(b) and (d) for assessment monitoring, and § 257.26(b) for corrective action.

(g) The owner or operator must specify in the operating record one of the following statistical methods to be used in evaluating ground-water monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of § 257.23(h). The owner or operator must place a justification for this alternative in the operating record and notify the State Director of the use of this alternative test. The justification must demonstrate that the alternative method meets the performance standards of § 257.23(h).

(h) Any statistical method chosen under § 257.23(g) shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate ground-water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate ground-water monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a predictional interval is used to evaluate ground-water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(i) The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular ground-water monitoring program that applies to the unit, as determined under §§ 257.24(a) or 257.25(a).

(A) In determining whether a statistically significant increase has occurred, the owner or operator must compare the ground-water quality of each parameter or constituent at each monitoring well designated pursuant to § 257.22(a)(2) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (g) and (h) of this section.

(B) Within a reasonable period of time after completing sampling and analysis, the owner or operator must determine whether there has been a statistically significant increase over background at each monitoring well.

§ 257.24 Detection monitoring program.

(a) Detection monitoring is required at facilities identified in § 257.5(a) at all ground-water monitoring wells defined under §§ 257.22(a)(1) and (a)(2). At a minimum, a detection monitoring program must include the monitoring for the constituents listed in appendix I of part 258 of this chapter.

(1) The Director of an approved State may delete any of the appendix I (Appendix I of part 258 of this chapter) monitoring parameters for a unit if it can be shown that the removed constituents are not reasonably expected to be contained in or derived from the waste contained in the unit.

(2) The Director of an approved State may establish an alternative list of inorganic indicator parameters for a unit, in lieu of some or all of the heavy metals (constituents 1–15 in appendix I to part 258 of this chapter), if the alternative parameters provide a reliable indication of inorganic releases from the unit to the ground water. In determining alternative parameters, the Director shall consider the following factors:

(i) The types, quantities, and concentrations of constituents in waste managed at the unit;

(ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the unit;

(iii) The detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(b) The monitoring frequency for all constituents listed in appendix I to part 258 of this chapter, or in the alternative list approved in accordance with paragraph (a)(2) of this section, shall be at least semiannual during the active life of the facility plus 30 years. A minimum of four independent samples from each well (background and downgradient) must be collected and analyzed for the appendix I (appendix I of part 258 of this chapter) constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the first semiannual sampling event. At least one sample from each well (background and downgradient) must be collected and analyzed during subsequent semiannual sampling events. The Director of an approved State may specify an appropriate alternative frequency for repeated sampling and analysis for appendix I (appendix I of part 258 of this chapter) constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the active life plus 30 years. The alternative frequency during the active life shall be no less than annual. The alternative frequency shall be based on consideration of the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Ground-water flow rates;

(4) Minimum distance between upgradient edge of the unit and downgradient monitoring well screen (minimum distance of travel); and

(5) Resource value of the aquifer.

(c) If the owner or operator determines, pursuant to § 257.23(g) of this part, that there is a statistically significant increase over background for one or more of the constituents listed in appendix I to part 258 of this chapter, or in the alternative list approved in accordance with paragraph (a)(2) of this section, at any monitoring well at the boundary specified under § 257.22(a)(2), the owner or operator:

(1) Must, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the State/Tribal Director that this notice was placed in the operating record; and

(2) Must establish an assessment monitoring program meeting the requirements of § 257.25 within 90 days except as provided for in paragraph (c)(3) of this section.

(3) The owner/operator may demonstrate that a source other than the unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this section. If, after 90 days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in § 257.25.

§ 257.25 Assessment monitoring program.

(a) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in appendix I of part 258 of this chapter or in the alternative list approved in accordance with § 257.24(a)(2).

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must sample and analyze the ground water for all constituents identified in appendix II of part 258 of this chapter. A minimum of one sample from each downgradient well must be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as the result of the complete appendix II (appendix II of part 258 of this chapter) analysis, a minimum of four independent samples from each well (background and downgradient) must be collected and analyzed to establish background for the new constituents. The Director of an approved State may specify an appropriate subset of wells to be sampled and analyzed for appendix II (appendix II of part 258 of this chapter) constituents during assessment monitoring. The Director of an approved State may delete any of the appendix II (appendix II of part 258 of this chapter) monitoring parameters for a unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The Director of an approved State may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of appendix II (appendix II of part 258) constituents required by § 257.25(b), during the active life plus 30 years considering the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Ground-water flow rates;

(4) Minimum distance between upgradient edge of the unit and downgradient monitoring well screen (minimum distance of travel);

(5) Resource value of the aquifer; and

(6) Nature (fate and transport) of any constituents detected in response to this section.

(d) After obtaining the results from the initial or subsequent sampling events required in paragraph (b) of this section, the owner or operator must:

(1) Within 14 days, place a notice in the operating record identifying the appendix II (appendix II of part 258 of this chapter) constituents that have been detected and notify the State Director that this notice has been placed in the operating record;

(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells specified by § 257.22(a), conduct analyses for all constituents in appendix I (appendix I of part 258 of this chapter) to this part or in the alternative list approved in accordance with § 257.24(a)(2), and for those constituents in appendix II to part 258 that are detected in response to paragraph (b) of this section, and record their concentrations in the facility

operating record. At least one sample from each well (background and downgradient) must be collected and analyzed during these sampling events. The Director of an approved State may specify an alternative monitoring frequency during the active life plus 30 years for the constituents referred to in this paragraph. The alternative frequency for appendix I (appendix I of part 258 of this chapter) constituents, or the alternative list approved in accordance with § 257.24(a)(2), during the active life shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph (c) of this section;

(3) Establish background concentrations for any constituents detected pursuant to paragraphs (b) or (d)(2) of this section; and

(4) Establish ground-water protection standards for all constituents detected pursuant to paragraph (b) or (d) of this section. The ground-water protection standards shall be established in accordance with paragraphs (h) or (i) of this section.

(e) If the concentrations of all appendix II (appendix II of part 258 of this chapter) constituents are shown to be at or below background values, using the statistical procedures in § 257.23(g), for two consecutive sampling events, the owner or operator must notify the State Director of this finding and may return to detection monitoring.

(f) If the concentrations of any appendix II (appendix II of part 258 of this chapter) constituents are above background values, but all concentrations are below the ground-water protection standard established under paragraphs (h) or (i) of this section, using the statistical procedures in § 257.23(g), the owner or operator must continue assessment monitoring in accordance with this section.

(g) If one or more appendix II (appendix II of part 258 of this chapter) constituents are detected at statistically significant levels above the ground-water protection standard established under paragraphs (h) or (i) of this section in any sampling event, the owner or operator must, within 14 days of this finding, place a notice in the operating record identifying the appendix II (appendix II of part 258 of this chapter) constituents that have exceeded the ground-water protection standard and notify the State Director and all appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(1) (i) Must characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(ii) Must install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with § 257.25(d)(2);

(iii) Must notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance with § 257.25(g)(1); and

(iv) Must initiate an assessment of corrective measures as required by § 257.26 within 90 days; or

(2) May demonstrate that a source other than a MSWLF unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and placed in the operating record. If a successful demonstration is made the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to § 257.25, and may return to detection monitoring if the appendix II (appendix II of part 258 of this chapter) constituents are at or below background as specified in § 257.25(e). Until a successful demonstration is made, the owner or operator must comply with § 257.25(g) including initiating an assessment of corrective measures.

(h) The owner or operator must establish a ground-water protection standard for each appendix II (appendix II of part 258 of this chapter) constituent detected in the ground-water. The ground-water protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under section 1412 of the Safe Drinking Water Act (codified) under 40 CFR part 141, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with § 257.22(a)(1); or

(3) For constituents for which the background level is higher than the MCL identified under paragraph (h)(1) of this section or health based levels identified under § 257.25(i)(1), the background concentration.

(i) The Director of an approved State may establish an alternative ground-water protection standard for constituents for which MCLs have not been established. These ground-water protection standards shall be appropriate health based levels that satisfy the following criteria:

(1) The level is derived in a manner consistent with Agency guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028, September 24, 1986);

(2) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR part 792) or equivalent;

(3) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) with the 1×10^{-4} to 1×10^{-6} range; and

(4) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subpart, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(j) In establishing ground-water protection standards under paragraph (i) of this section, the Director of an approved State may consider the following:

(1) Multiple contaminants in the ground water;

(2) Exposure threats to sensitive environmental receptors; and

(3) Other site-specific exposure or potential exposure to ground water.

§ 257.26 Assessment of corrective measures.

(a) Within 90 days of finding that any of the constituents listed in appendix II (Appendix II of part 258 of this chapter) have been detected at a statistically significant level exceeding the ground-water protection standards defined under § 257.25 (h) or (i), the owner or operator must initiate an assessment of corrective measures. Such an assessment must be completed within a reasonable period of time.

(b) The owner or operator must continue to monitor in accordance with the assessment monitoring program as specified in § 257.25.

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under § 257.27, addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential

remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and

(4) The institutional requirements such as State or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator must discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

§ 257.27 Selection of remedy.

(a) Based on the results of the corrective measures assessment conducted under § 257.26, the owner or operator must select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. The owner or operator must notify the State Director, within 14 days of selecting a remedy, that a report describing the selected remedy has been placed in the operating record and how it meets the standards in paragraph (b) of this section.

(b) Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the ground-water protection standard as specified pursuant to §§ 257.25(h) or (i);

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of appendix II (appendix II of part 258 of this chapter) constituents into the environment that may pose a threat to human health or the environment; and

(4) Comply with standards for management of wastes as specified in § 257.28(d).

(c) In selecting a remedy that meets the standards of § 257.27(b), the owner or operator shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases;

(ii) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator, including a consideration of the technical and economic capability.

(5) The degree to which community concerns are addressed by a potential remedy(s).

(d) The owner or operator shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in paragraphs (d)(1) through (d)(8) of this section. The owner or operator must consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination;

(2) Practical capabilities of remedial technologies in achieving compliance with ground-water protection standards established under §§ 257.25(g) or (h) and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Ground-water quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituent;

(v) The hydrogeologic characteristic of the facility and surrounding land;

(vi) Ground-water removal and treatment costs; and

(vii) The cost and availability of alternative water supplies.

(7) Practicable capability of the owner or operator.

(8) Other relevant factors.

(e) The Director of an approved State may determine that remediation of a release of an appendix II (appendix II of part 258 of this chapter) constituent from the unit is not necessary if the owner or operator demonstrates to the Director of the approved state that:

(1) The ground-water is additionally contaminated by substances that have originated from a source other than the unit and those substances are present in concentrations such that cleanup of the release from the unit would provide no significant reduction in risk to actual or potential receptors; or

(2) The constituent(s) is present in ground water that:

(i) Is not currently or reasonably expected to be a source of drinking water; and

(ii) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) that would exceed the ground-water protection standards established under § 257.25 (h) or (i); or

(3) Remediation of the release(s) is technically impracticable; or

(4) Remediation results in unacceptable cross-media impacts.

(f) A determination by the Director of an approved State pursuant to

paragraph (e) of this section shall not affect the authority of the State to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground-water, to prevent exposure to the ground-water, or to remediate the ground-water to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

§ 257.28 Implementation of the corrective action program.

(a) Based on the schedule established under § 257.27(d) for initiation and completion of remedial activities the owner/operator must:

(1) Establish and implement a corrective action ground-water monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under § 257.25;

(ii) Indicates the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with ground-water protection standard pursuant to paragraph (e) of this section.

(2) Implement the corrective action remedy selected under § 257.27; and

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to § 257.27. The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the ground-water that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause hazardous constituents to migrate or be released;

(vi) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of § 257.27(b) are not being achieved through the remedy selected. In such cases, the owner or operator must implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under § 257.28(c).

(c) If the owner or operator determines that compliance with requirements under § 257.27(b) cannot be practically achieved with any currently available methods, the owner or operator must:

(1) Obtain certification of a qualified ground-water scientist or approval by the Director of an approved State that compliance with requirements under § 257.27(b) cannot be practically achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

(i) Technically practicable; and

(ii) Consistent with the overall objective of the remedy.

(4) Notify the State Director within 14 days that a report justifying the alternative measures prior to implementing the alternative measures has been placed in the operating record.

(d) All solid wastes that are managed pursuant to a remedy required under § 257.27, or an interim measure required under § 257.28(a)(3), shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA requirements.

(e) Remedies selected pursuant to § 257.27 shall be considered complete when:

(1) The owner or operator complies with the ground-water protection standards established under §§ 257.25(h) or (i) at all points within the plume of contamination that lie beyond the ground-water monitoring well system established under § 257.22(a).

(2) Compliance with the ground-water protection standards established under §§ 257.25 (h) or (i) has been achieved by demonstrating that concentrations of appendix II (appendix II of part 258 of this chapter) constituents have not exceeded the ground-water protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in § 257.23 (g) and (h). The Director of an approved State may specify an alternative length of time during which the owner or operator must demonstrate that concentrations of appendix II (appendix II of part 258 of this chapter) constituents have not exceeded the ground-water protection standard(s) taking into consideration:

(i) Extent and concentration of the release(s);

(ii) Behavior characteristics of the hazardous constituents in the ground-water;

(iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(iv) Characteristics of the ground-water.

(3) All actions required to complete the remedy have been satisfied.

(f) Upon completion of the remedy, the owner or operator must notify the State Director within 14 days that a certification that the remedy has been completed in compliance with the requirements of § 257.28(e) has been placed in the operating record. The certification must be signed by the owner or operator and by a qualified ground-water scientist or approved by the Director of an approved State.

Recordkeeping Requirements

§ 257.30 Recordkeeping requirements.

(a) The owner/operator of a non-municipal solid waste disposal facility must record and retain near the facility in an operating record or in an alternative location approved by the Director of an approved State the following information as it becomes available:

(1) Any location restriction demonstration required under §§ 257.7 through 257.12; and

(2) Any demonstration, certification, finding, monitoring, testing, or analytical data required in §§ 257.21 through 257.28.

(b) The owner/operator must notify the State/Tribal Director when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating record must be furnished upon request to the State Director or be made available at all reasonable times for inspection by the State Director.

(c) The Director of an approved State can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs

(a) and (b) of this section, except for the notification requirements in §§ 257.7(b) and 257.25(g)(1)(iii).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Subpart A—General

6. Section 261.5 is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(f) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to part 258 of this chapter;

(v) Permitted, licensed, or registered by a State to manage non-municipal solid waste and, if managed in a non-municipal solid waste disposal facility is subject to the requirements in §§ 257.5 through 257.30 of this chaper; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(g) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of this hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to part 258 of this chapter;

(v) Permitted, licensed, or registered by a State to manage non-municipal solid waste and, if managed in a non-municipal solid waste disposal facility is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

7. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 8905, 8912(a), and 8926.

8. In § 271.1, paragraph (j), Table 1 is amended by adding the following entry in chronological order by publication date:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
[Insert date of publication of the final rule in FR].	Revisions to Criteria applicable to solid waste disposal facilities that may accept CESQG hazardous wastes, excluding MSWLFs.	[Insert publication citation of the final rule].	[Insert date 18 months after date of publication in *FR* of the final rule].

[FR Doc. 95–14065 Filed 6–9–95; 8:45 am]

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federal register

Monday
June 12, 1995

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 916 and 917

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV95–916–1FIR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate modifications, the provisions of an interim final rule which revised the handling requirements for California nectarines and peaches by modifying the size, maturity, container, and pack requirements for fresh shipments of these fruits, beginning with 1995 season shipments. This rule enabled handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits.

EFFECTIVE DATE: June 12, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2861; or Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 [7 CFR parts 916 and 917] regulating the handling of nectarines and peaches grown in California, hereinafter referred to as the orders. The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

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

There are about 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. All of the handlers sell peaches, while three out of four handlers sell nectarines. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts from all sources are less than $5,000,000 and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers have sales of less than $5,000,000 and may be classified as small entities. In recent seasons, only about ten handlers had combined peach and nectarine sales of $5,000,000 or more. In recent years, average combined sales of peaches and nectarines per handler have been about $600,000. Typically, about three-fourths of peach and nectarine handlers have sales of less than the average for the industry.

The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) met on December 7, 1994, and unanimously recommended that the handling requirements for California nectarines and peaches be revised, respectively. These committees meet prior to and during each season to review the rules and regulations effective on a continuous basis for California nectarines and peaches under the orders. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

Container and Pack Requirements (Nectarines)

Section 916.350 specifies container and pack requirements for fresh nectarine shipments. Paragraph (a)(4)(iv) of § 916.350 specifies the tray-pack size designations which must be marked on loose-filled or tight-filled containers, depending on the size of the fruit. The size designations specify the maximum number of nectarines in a 16-pound sample for each tray-pack size designation. This rule revises paragraph (a)(4)(iv) of § 916.350 by modifying two size designations for the weight-count standards in Column B of TABLE I for early-season and mid-season nectarine varieties. This table was added prior to the 1994 season. Research conducted by the NAC indicated that early-season and mid-season fruit weigh less than late-season fruit and therefore different weight-count standards were established for late-season fruit. Results from further research during the 1994 season suggest that some minor modifications of TABLE I are necessary to provide for more accurate weight-count standards for early-season and mid-season nectarines.

The NAC unanimously recommended these revised weight-count standards for nectarines after a comprehensive review of the relationships between the tray-pack containers and loose-filled or tight-filled containers for early-season and mid-season nectarine varieties. Specifically, the NAC's recommendation provides that the maximum number of nectarines of size 80 in a 16-pound sample of early-season and mid-season fruit is more appropriately 75 rather than 76. Also, the maximum number of nectarines of size 64 in a 16-pound sample of early-season and mid-season fruit is more appropriately 55 rather than 56.

Pack regulations provide for uniform packing practices. In particular, weight-

count standards provide for comparability between fruit packed in loose-filled or tight-filled containers and fruit packed in tray-pack containers.

According to the NAC, packers occasionally moved fruit from tray-pack containers to loose-filled or tight-filled containers. This activity has led to an awareness, in regard to early-season and mid-season varieties, that fruit which was of proper size when tray-packed exceeded the maximum number of nectarines for the 16-pound sample for corresponding loose-filled or tight-filled containers. In some instances, these samples would need additional pieces of fruit to meet the 16-pound weight requirement, thus causing the pack to be marked smaller than its equivalent tray-pack size. When packs are marked with a smaller size, the container is generally sold for a lower price. Revised and refined weight-count standards for early-season and mid-season varieties should provide for more accurate marking of size when packed in loose-filled or tight-filled containers compared to equivalent sizes that are tray packed. These regulations provide for uniformly packed containers of nectarines. The NAC's recommendations were also thoroughly discussed at a nectarine size subcommittee meeting held on November 22, 1994, that involved members of the industry and USDA staff.

Currently, under the marketing order the minimum maturity requirement for nectarines grown in California is U.S. Mature, which means that the nectarine has reached the stage of growth which will insure a proper completion of the ripening process. A higher maturity standard is defined as California ''Well Matured,'' which is a condition distinctly more advanced than mature.

This rule adds a definition of ''tree ripe'' to paragraph (b) of section 916.350. According to the NAC, ''tree ripe'' is an optional marking without regard to maturity that is stamped on containers of nectarines. Currently there is no definition of ''tree ripe''. As a result of inquiries from the industry and the trade, the NAC recommended defining ''tree ripe'' so that it has a standard meaning. In the past, there has been no definition of ''tree ripe'' although fruit boxes marked ''tree ripe'' had to meet the minimum marketing order maturity standard of U.S. Mature. Handlers have been able to stamp any maturity level, including U.S. Mature, as ''tree ripe'' due to a lack of any definition for this nomenclature. The NAC stated that in some instances, handlers have stamped ''tree ripe'' on every box of fruit they packed all season. There is growing concern within the industry that fruit packed at the lower level of acceptable maturity do not represent what is most commonly perceived as tree ripe. By requiring that fruit must be at a minimum California Well Matured maturity standard in order to be marked ''tree ripe'' will help ensure that buyer expectations are met.

Maturity Requirements (Nectarines)

Section 916.356 specifies maturity requirements for fresh nectarines in paragraph (a)(1)(i), including TABLE I, for fruit being inspected and certified as meeting the maturity requirements for ''well matured'' fruit. Such maturity requirements are based on maturity measurements which are generally recognized in terms of maturity guides (e.g., color chips) specified in paragraph (a)(1)(i) and TABLE I of § 916.356 for nectarines. This rule revises TABLE I of paragraph (a)(1)(i) of § 916.356 for nectarines to change the maturity guide for one nectarine variety.

Specifically, a change in color standard was recommended for Alshir Red from L to J. In a corresponding action, the tolerance for the Alshir Red variety that states ''except not less than an aggregate area of 95% of fruit surface shall meet the color standard established for the variety'' is deleted.

These changes for this nectarine variety are based on a continuing review of its individual maturity characteristics, and the identification of the appropriate color chip corresponding to the ''well matured'' level of maturity for such variety.

Size Requirements (Nectarines)

Section 916.356 specifies size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises § 916.356 to establish variety-specific size requirements for fourteen nectarine varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1994 season.

Size regulations are put in place to improve fruit quality by allowing fruit to stay on the tree for a greater length of time which not only improves maturity and therefore the quality of the product but also size and increases the number of packed boxes of nectarines per acre. This provides greater consumer satisfaction, more repeat purchases and therefore increases returns to growers. Varieties recommended for specific size regulation have been reviewed and recommendations are based on the characteristics of the variety to attain minimum size. Paragraph (a)(4) is revised to include the Arctic Glo, May Jim, Red Glo, and Royal Glo varieties; and paragraph (a)(6) of § 916.356 is revised to include the Arctic Queen, How Red, La Pinta, Red Fred, Royal Red, Ruby Diamond, Spring Bright, Summer Blush, 424–195, and Nectarine 23 varieties.

This rule also revises § 916.356 to remove six nectarine varieties from the variety-specific size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1994 season. Paragraph (a)(2) of that section is revised to remove the Aurelio Grand and Maybelle nectarine varieties; paragraph (a)(4) is revised to remove the Grand Stan variety; and paragraph (a)(6) is revised to remove the Autumn Grand, Le Grand, and Super Red nectarine varieties. Nectarine varieties removed from the nectarine variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

The NAC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine varieties, and consumer acceptance levels for various sizes of fruit. This rule is designed to establish minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

This rule also corrects an error in the minimum size requirements for Royal Glo variety nectarines from size 80 to size 88. The 1995 seasonal regulations list a minimum size of 80 for the Royal Glo nectarine variety. Royal Glo variety nectarines are an early season variety and are usually harvested in mid to late May. Nectarines are assigned minimum sizes, based on the time of harvest and size characteristics of specific nectarine varieties. Nectarines harvested in mid to late May are usually smaller, therefore the minimum size 88 category is more responsive to market needs. Based on this criterion, the Royal Glo variety nectarine should have been in the minimum size 88 category. As such, the reference to the Royal Glo variety nectarine is added to § 916.356 paragraph (a)(4) and removed from paragraph (a)(6) under that section.

Container and Pack Requirements (Peaches)

Section 917.442 currently specifies container and pack requirements for fresh peach shipments. Paragraph (a)(4)(iv) of § 917.442 specifies the tray-pack size designations which must be marked on loose-filled or tight-filled containers, depending on the size of the fruit. The

size designations specify the maximum number of peaches in a 16-pound sample for each tray pack size designation. This rule revises paragraph (a)(4)(iv) of § 917.442 by modifying three size designations for the weight-count standards in Column B of TABLE I for early-season and mid-season peach varieties. Research conducted by the PCC indicated that early-season and mid-season fruit weighs less than late-season fruit and the weight-count standards were, therefore, modified based on that consideration. Results from the 1994 season suggest that some minor modifications of TABLE I are necessary to further correct the weight-count differences between early-season and mid-season peaches, and late-season peaches.

The PCC unanimously recommended the revised container marking requirement changes for peaches after a comprehensive review of the appropriate size pack-count relationships between the tray-pack containers and loose-filled or tight-filled containers for early-season and mid-season peach varieties prior to the 1995 season. Specifically, the PCC's recommendation provides that the maximum number of peaches of size 84 in a 16-pound sample of early-season and mid-season fruit is more appropriately 83 rather than 85. Also, the maximum number of peaches of size 70 in a 16-pound sample of early-season and mid-season fruit is more appropriately 64 rather than 66. The maximum number of peaches of size 60 in a 16-pound sample of early-season to mid-season fruit is more appropriately 50 rather than 47.

In making this revision, a conforming change is required in § 917.459 (a)(4)(iii) which is referenced in TABLE I. Section 917.459 (a)(4)(iii) currently provides a maximum number of 85 peaches in a 16-pound sample of early-season and mid-season fruit. This revision will modify the maximum number of peaches in a 16-pound sample of early-season and mid-season fruit to 83 pieces of fruit from the current 85 pieces of fruit.

Pack regulations provide for uniform packing practices. In particular, weight-count standards provide for equality between packs of loose-filled or tight-filled sizes to fruit sizes packed in tray-pack styles. Varieties harvested early in the season and packed in loose-filled or tight-filled pack styles have had more difficulty being equal in size to tray-pack style of packing.

According to the PCC, packers occasionally moved fruit from tray-pack styles of pack to loose-filled or tight-filled pack styles. This activity has led to an awareness, especially in regard to early-season varieties, that fruit which was of proper size when tray-packed exceeded the maximum number of nectarines for the 16-pound sample for corresponding loose-filled or tight-filled pack size. In some instances, these samples would need as many as 10 additional pieces of fruit to meet the 16-pound weight requirement, thus causing the pack to be ''marked'' smaller than its equivalent tray-pack size. When packs are ''marked'' smaller this causes the container to be sold for a lower price. During the 1994 season new weight-count assignments for early varieties were in place. Research continued with the purpose of possible refinement of those weight-count assignments.

Revised and refined weight-count standards for early varieties should provide for more accurate marking size when packed in loose-filled or tight-filled pack styles compared to equivalent sizes that are tray packed. These regulations provide for uniformly packed containers of peaches. The PCC's recommendations were also thoroughly discussed at a peach size subcommittee meeting held on November 22, 1994, that involved members of the industry and USDA staff.

Currently, under the marketing order the minimum maturity requirement for peaches grown in California is U.S. Mature, which means that the peach has reached the stage of growth which will insure a proper completion of the ripening process. A higher maturity standard is defined as California ''Well Matured,'' which is a condition distinctly more advanced than mature.

This rule adds a definition of ''tree ripe'' to section 917.442 paragraph (b). According to the PCC, ''tree ripe'' is an optional marking without regard to maturity that is stamped on containers of peaches. Currently there is no definition of ''tree ripe''. As a result of inquiries from the industry and the trade, the PCC wants to define ''tree ripe'' so that its interpretation is consistent with other descriptive markings. In the past there has been no definition of tree ripe although fruit boxes marked ''tree ripe'' had to meet minimum marketing order standards. Handlers have been able to stamp any maturity level, including U.S. Mature, as ''tree ripe'' due to a lack of any definition for this nomenclature. The PCC states that in some instances in the past, it is known that some handlers have stamped ''tree ripe'' on every box of fruit they packed all season. There is growing concern among the industry that fruit packed at the lowest levels of maturity do not represent what is most commonly perceived as tree ripe. By requiring fruit be at a minimum California ''Well Matured'' maturity standard in order to be marked ''tree ripe'' will help ensure that buyer expectations are met.

Maturity Requirements (Peaches)

Section 917.459 specifies maturity requirements for fresh peaches in paragraphs (a)(1)(i) and (ii), including TABLE I, for fruit being inspected and certified as meeting the maturity requirements for ''well matured'' fruit. Such maturity requirements are based on maturity measurements which are generally recognized in terms of maturity guides (e.g., color chips) specified in paragraphs (a)(1)(i) and (ii), including TABLE I of § 917.459 for peaches. This rule revises TABLE I of paragraph (a)(1)(ii) of § 917.459 for peaches to change the maturity guide for the David Sun, King's Red, Crimson Lady and Johnny's White peach varieties. The reference to TABLE I of paragraph (a)(1)(ii) is a change from the interim final rule which incorrectly cited the revisions in TABLE I under paragraph (a)(2)(ii).

The SPI recommended these changes for these peach varieties based on a continuing review of their individual maturity characteristics, and the identification of the appropriate color chip corresponding to the ''well matured'' level of maturity for such varieties.

Size Requirements (Peaches)

Section 917.459 specifies size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule revises § 917.459 to establish variety-specific size requirements for eight peach varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1994 season.

Size regulations are put in place to improve fruit quality by allowing fruit to stay on the tree for a greater length of time which not only improves maturity and therefore the quality of the product but also size and increases the number of packed boxes of peaches per acre. This provides greater consumer satisfaction, more repeat purchases and therefore increases returns to growers. Varieties recommended for specific size regulation have been reviewed and recommendations are based on the characteristics of the variety to attain minimum size. In § 917.459 paragraph (a)(5) is revised to include the Snow Brite and Sugar May peach varieties; and paragraph (a)(6) is revised to include the August Delight, Autumn

Rose, Red Boy, Royal Lady, September Snow, and Summer Sweet peach varieties.

This rule also revises § 917.459 to remove two peach varieties from the variety-specific size requirements specified in that section, because less than 5,000 packages of each of these varieties were produced during the 1994 season. In § 917.459 paragraph (a)(4) is revised to remove the Morning Sun peach variety; and paragraph (a)(6) is revised to remove the Golden Lady peach variety. Peach varieties removed from the variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The removal of the Morning Sun variety from paragraph (a)(4) results in there being no varieties regulated within size 84 for the 1995 season. Since the variety-specific list is subject to change from one season to another, the Department wishes to reserve paragraph number § 916.459 (a)(4) for future regulation of peaches at size 84. The PCC unanimously recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these peach varieties, and the consumer acceptance levels for various sizes of fruit. This rule is designed to establish minimum size requirements for fresh peaches consistent with expected crop and market conditions. This rule reflects the committees' and the Department's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. The Department's determination is that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

This rule establishes handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries provide fruit desired by consumers. This rule is designed to establish and maintain orderly marketing conditions for these fruits in the interest of producers, handlers, and consumers.

The interim final rule concerning this action was published in the March 21, 1995, **Federal Register** (60 FR 14891), with a 30-day comment period ending April 20, 1995. Two comments were received.

One comment was received from Mr. Jonathan Field, manager of the NAC and PCC, in support of the committees' recommendations. Another comment was received from Chief Counsel for Advocacy of the United States Small Business Administration (SBA). The SBA contended that the Department failed to follow its own procedures for informal rulemaking by not publishing the votes on the committees' recommendations. The SBA further stated that the interim final rule does not relate how the committees determined what the impact of the rule would be on growers, handlers and consumers. SBA further stated that the interim final rule provides no evidence of the impact that these rule changes will have on small businesses.

In response to the SBA concerns, the Department followed its informal rulemaking procedures in reviewing the committees' recommendations. The Department reviewed and considered the information received from the NAC and PCC as it relates to alternative recommendations and the impact of this rule on small businesses (i.e., growers and handlers).

The Department disagrees with SBA's assertion that the interim final rule fails to follow the Department's informal rulemaking procedures and the requirements for the Regulatory Flexibility Act. The SBA's concerns regarding this action have been properly addressed in this document and the interim final rule.

The revision of the handling requirements for fresh peaches and nectarines adopted by this final rule will apply uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. The stabilizing effects of the handling regulation impact both small and large handlers positively by helping them maintain their markets by meeting consumer demand.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

The interim amendments to 7 CFR part 916 which were published at 60 FR 14891 on March 21, 1995, are adopted as a final rule with the following change:

§ 916.356 [Amended]

2. In § 916.356, paragraph (a)(4) is amended by adding the name ''Royal Glo,'' immediately following the name ''Rose Diamond,'' and paragraph (a)(6) is amended by removing the name ''Royal Glo,''.

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

The interim amendments to 7 CFR part 917 which were published at 60 FR 14891 on March 21, 1995, are adopted as a final rule with the following change:

§ 917.459 [Corrected]

3. On page 14896, first column, in the amendatory instruction number 5, the reference to paragraph ''(a)(2)(ii)'' is corrected to ''(a)(1)(ii)'' and in the second column, under paragraph designated § 917.459, the reference to ''(a)(2)(ii)'' is corrected to read ''(a)(1)(ii)''.

Dated: June 6, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–14276 Filed 6–9–95; 8:45 am]

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federal register

Monday
June 12, 1995

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Two Tidal Marsh Plants—the Suisun Thistle and the Soft Bird's-Beak From the San Francisco Bay Area; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD14

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Two Tidal Marsh Plants—Cirsium hydrophilum var. hydrophilum (Suisun Thistle) and Cordylanthus mollis ssp. mollis (Soft Bird's-Beak) from the San Francisco Bay Area

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for two plants—*Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak). These species are restricted to salt or brackish tidal marshes within the San Francisco Bay area in northern California. Habitat conversion, water pollution, changes in salinity, indirect effects of urbanization, stochastic events, mosquito abatement activities (including off-road vehicle use), competition with non-native vegetation, insect predation, erosion, inadequate regulatory mechanisms, and other human-caused actions variously imperil these two species. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these plants.

DATES: Comments from all interested parties must be received by August 11, 1995. Public hearing requests must be received by July 27, 1995.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1803, Sacramento, California 95825-1846. Comments and materials received, as well as the supporting documentation used in preparing the rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp, Sacramento Field Office (see **ADDRESSES** section) (telephone 916/978-5801; facsimile 916/978-5056).

SUPPLEMENTARY INFORMATION:

Background

Cirsium hydrophilum var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak) occur in either salt water or brackish tidal marshes fringing San Pablo and Suisun Bays in the San Francisco Bay area of northern California. Since 1850, this habitat has been drastically curtailed. Approximately 15 percent, 12,142 hectares (ha) (30,002 acres), of the historical tidal marshland habitat within the San Francisco Bay area remains (Dedrick 1989).

With the exception of the San Francisco Bay area, the mountainous coast of California and the narrow continental shelf provide few areas that are suitable for tidal marsh development (MacDonald 1990). Coastal salt marshes are found along sheltered margins of shallow bays, estuaries, or lagoons, in low lying areas that are subject to periodic inundation by salt water. Brackish marshes occur at the interior margins of coastal bays, estuaries, or lagoons where fresh water sources (streams and rivers) enter salt marshes. Brackish marshes are similar to salt marshes but differ in the degree of water and soil salinities. Brackish marshes are less saline than salt marshes. Salinity levels vary with time and space, depending on the height of the tides or on the amount of freshwater inflow. Vegetation communities in salt and brackish marshes often occur in distinct zones, depending on the frequency and length of tidal flooding. Both proposed plants are restricted to a narrow tidal band, typically in higher elevational zones within larger tidal marshes that have fully developed tidal channel networks. They usually do not occur in smaller fringe tidal marshes that are generally less than 100 meters (m) (300 feet (ft)) in width, or in nontidal areas.

Discussion of the Two Species Proposed for Listing

Asa Gray (1888) originally described *Cirsium hydrophilum* var. *hydrophilum* as *Cnicus breweri* var. *vaseyi*. Subsequent authors treated the taxon as *Carduus hydrophilus* (Greene 1892), *Cirsium hydrophilum* (Jepson 1901), and *Cirsium vaseyi* var. *hydrophilum* (Jepson 1925). John Thomas Howell (1959) concluded that Jepson's *Cirsium hydrophilum* and *Cirsium vaseyi* of the Mt. Tamalpais area in Marin County, California are varieties of a single species, *Cirsium hydrophilum*. According to the rules for botanical nomenclature, when a new variety is described in a species not previously divided into infraspecific taxa, an autonym (automatically created name) is designated. In this case, the autonym is *Cirsium hydrophilum* var. *hydrophilum*.

Cirsium hydrophilum var. *hydrophilum* is a perennial herb in the aster family (Asteraceae). Slender, erect stems 1.0 to 1.5 m (3.0 to 4.5 ft) tall are well branched above. The spiny leaves are deeply lobed. The lower leaves have ear-like basal lobes; the upper leaves are reduced to narrow strips with strongly spine-toothed margins. Pale lavender-rose flower heads, 2.0 to 2.5 centimeters (cm) (1 inch (in.)) long, occur singly or in loose groups. The bracts of the flower heads have a distinct green, glutinous ridge on the back that distinguishes *C. hydrophilum* var. *hydrophilum* from other *Cirsium* species in the area. *Cirsium hydrophilum* var. *hydrophilum* flowers between July and September. *Cirsium hydrophilum* var. *hydrophilum* is restricted to Suisun Marsh in Solano County. In 1975, the plant was reported as possibly extinct because it had not been collected for about 15 years. Extensive surveys, however, relocated the thistle at two locations within Suisun Marsh (Brenda Grewell, California Department of Water Resources (CDWR), pers. comm. 1993). Collectively, the occurrences of *C. hydrophilum* var. *hydrophilum* total a few thousand individuals (Brenda Grewell, pers. comm. 1993). *Cirsium hydrophilum* var. *hydrophilum* grows in the upper reaches of tidal marshes associated with *Typha angustifolia, Scirpus americanus, Juncus balticus,* and *Distichlis spicata.* One occurrence is on California Department of Fish and Game (CDFG) lands and a second occurrence is on Solano County Farmland and Open Space Foundation lands. No active management is occurring at either location (Neil Havlik, Solano County Farmland and Open Space Foundation, pers. comm. 1993; Ann Howald, CDFG, pers. comm. 1993). Its highly restricted distribution increases its susceptibility to catastrophic events such as disease or pest outbreak, severe drought, oil spills, or other natural or human caused disasters. Habitat conversion, habitat fragmentation, indirect effects from urban development, increased salinity, projects that alter natural tidal regime, mosquito abatement activities, competition with non-native plants, and inadequate regulatory mechanisms also threaten this taxon.

Charles Wright collected the type specimen of *Cordylanthus mollis* ssp. *mollis* in November 1855, on Mare Island in San Francisco Bay. Asa Gray (1868) published the original description, using the name *C. mollis.* Later botanists treated the taxon as Adenostegia mollis (Greene 1891) and *Chloropyron molle* (Heller 1907). Tsan-

Iang Chuang and Larry Heckard (1973) treated *C. mollis* and *C. hispidus* as subspecies of a single species (*C. mollis*) with *Cordylanthus mollis* ssp. *mollis* recognized as the autonym.

Cordylanthus mollis ssp. *mollis* is an annual herb of the snapdragon family (Scrophulariaceae) that grows 25 to 40 cm (10 to 16 in.) tall. It is sparingly branched from the middle and above. *Cirsium mollis* ssp. *mollis* is a hemiparasite that extracts water and nutrients by attaching enlarged root structures to the roots of other plants (Chuang and Heckard 1971). The foliage is grayish-green (often tinged a deep red) and hairy. The oblong to lance-shaped leaves are 1.0 to 2.5 cm (0.4 to 1.0 in.) long, the lower leaves entire and the upper with one to three pairs of leaf lobes. The inflorescence consists of spikes 5 to 15 cm (2 to 6 in.) long. A floral bract with two to three pairs of lobes occurs immediately below each inconspicuous white or yellowish-white flower. The flowers have only two functional stamens. The narrowly ovoid seed capsule is 6 to 10 millimeters (mm) (0.2 to 0.4 in.) long and bears 20 to 30 dark brown seeds. *Cordylanthus mollis* ssp. *mollis* flowers between July and September. *Cordylanthus mollis* ssp. *mollis* is distinguished from another *Cordylanthus* found nearby (*C. maritimus* ssp. *palustris*) by its two functional stamens (*C. maritimus* ssp. *palustris* has four) and by its bracts with two to three pairs of lateral lobes (*C. maritimus* ssp. *palustris* has a pair of short teeth on the floral bracts).

Cordylanthus mollis ssp. *mollis* is found predominantly in the upper reaches of salt grass-pickleweed marshes at or near the limits of tidal action (Stromberg 1986). It is associated with *Salicornia virginica, Distichlis spicata, Jaumea carnosa, Frankenia salina,* and *Triglochin maritima* (Stromberg 1986). Of 18 reported occurrences of *C. mollis* ssp. *mollis,* 2 have been extirpated; 6 have been surveyed for and not relocated and possibly have been extirpated; and 10 are presumed extant (California Natural Diversity Data Base (CNDDB) 1994; Jake Ruygt, California Native Plant Society (CNPS), *in litt.* 1993). The type locality at Mare Island for *C. mollis* ssp. *mollis* was destroyed by development and is now a dredge disposal site (CNDDB 1994). A second occurrence, last seen in 1981 near Martinez in Contra Costa and Solano Counties, was dredged, filled, diked, and is now a marina (Stromberg 1986, CNDDB 1994). Limited suitable habitat remains for two occurrences, which have not been relocated, in Napa, Sonoma, and Solano Counties (Stromberg 1986, CNDDB 1994). Although suitable habitat exists for three historical occurrences in Marin, Solano, and Sonoma Counties, the occurrences have not been relocated after repeated surveys (Stromberg 1986, CNDDB 1994). A fourth occurrence reported from Sacramento County in 1972 has not been relocated (Jake Ruygt, *in litt.* 1993).

The remaining ten disjunct occurrences are widely scattered throughout coastal salt or brackish tidal marshes fringing San Pablo and Suisun Bays, in Contra Costa, Napa, and Solano Counties (CNDDB 1994; Brenda Grewell, *in litt.* 1993). The entire distribution of *Cordylanthus mollis* ssp. *mollis* currently is restricted to about 8 ha (20 acres) of habitat (Jake Ruygt, *in litt.* 1993). The total number of individuals reported among populations varies from 1 at the smallest site to 141,000 plants at the largest site. Most sites have between 1,000 and 6,000 individuals (Jake Ruygt, *in litt.* 1993; CNDDB 1994). Individual populations fluctuate in size from year to year, as is typical of annual plants. *Cordylanthus mollis* ssp. *mollis* occurs primarily on private or non-Federal land; one occurrence is found on Department of Defense (U.S. Navy) land. Habitat conversion, water pollution, increases in salinity of tidal marshes due to upstream withdrawals of fresh water, habitat fragmentation, indirect effects of urbanization, competition with non-native vegetation, insect predation, projects that alter natural tidal regime, mosquito abatement activities (including off-road vehicle use), inadequate regulatory mechanisms, erosion, and stochastic events variously threaten the remaining occurrences of *C. mollis* ssp. *mollis.*

Previous Federal Action

Federal government actions on the two plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and listed *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* as possibly extinct. The Service published a notice on July 1, 1975 (40 FR 27823), of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions now are found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The above two taxa were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* were included in the June 16, 1976, **Federal Register** proposal.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, notice (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796), the Service withdrew the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). The two taxa were listed as category 1 candidates for Federal listing in this document. Category 1 taxa are those that the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On November 28, 1983, the Service published a supplement to the Notice of Review (48 FR 53640); there were no changes to these taxa in this supplement.

The plant notice was revised again on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). In these three notices *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* were included as category 1 candidate species.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis,* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing

actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). The finding was reviewed annually in October of 1983 through 1994, pursuant to section 4(b)(3)(C)(i) of the Act. Publication of this proposal constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (Act) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cirsium hydrophilum* (Greene) Jepson var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* Gray ssp. *mollis* (soft bird's-beak) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

Habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* has been severely curtailed by past human activities. Hydraulic mining, diking and filling involved in agricultural land conversion and urbanization, waste disposal, port and industrial development, railroad construction, dredging, salt production, and sedimentation have drastically reduced the amount of tidal marsh in California (Atwater 1979, MacDonald 1990, Association of Bay Area Governments (ABAG) 1991). Changes in freshwater inflow, pollution, habitat conversion, habitat fragmentation, and alteration of the natural tidal regime continue to threaten the habitat of both species.

In San Pablo Bay, historical tidal wetlands have been diked and converted to agricultural lands that were farmed for oat hay. In addition, approximately 4,050 ha (10,000 acres) also were converted to salt ponds. In Suisun Bay, most of the 28,780 ha (71,100 acres) of tidal marshes that existed in 1850 were converted originally to agricultural land, and then to diked seasonal wetlands used for waterfowl management. Only 3,780 ha (9,340 acres) within Suisun Marsh remain as tidal marsh (Dedrick 1989). Most of the remaining tidal marshes are backed by steep levees, allowing for little or no transitional wetland habitat—the habitat required by *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis.*

The change of freshwater inflow has modified the habitat for these two taxa. Agricultural and municipal uses have diverted over 50 percent of the historical annual inflow of freshwater from the Suisun Marsh and Delta (ABAG 1991). During the past 40 years, significant portions of the tidally-influenced brackish marsh within Suisun Bay have become more saline due to decreased freshwater flows (Pavlik 1992). Increased salt levels within the Suisun Marsh may threaten *Cordylanthus mollis* ssp. *mollis* and *Cirsium hydrophilum* var. *hydrophilum*. Salt stress causes decreased plant growth and lower reproduction. When salinity levels remain high during extended drought conditions, population viability may be greatly impaired to the extent they lose their ability to maintain themselves as components of a healthy wetlands ecosystem (Pavlik 1992). When salinity increases in the root zone, salt stress reduces plant abundance and causes shifts in plant distribution. This has occurred even in common salt-tolerant plants (Pavlik 1992). *Cordylanthus mollis* ssp. *mollis* and *C. hydrophilum* var. *hydrophilum* may be especially vulnerable to increased salt levels due to the limited number of individuals and their restricted distribution.

The two plant species also face threats from habitat fragmentation associated with commercial and residential development, road construction, and effects of historical fragmentation by activities associated with clearing for agriculture, railroad construction, dredging, and conversion to salt ponds. These activities have split habitat into smaller, more isolated units. Habitat fragmentation may alter the physical environment, changing the amount of incoming solar radiation, water, wind, or nutrients for the remnant vegetation (Saunders *et al.* 1991). In addition, a higher proportion of the area of these fragmented natural areas is subject to the influences from external factors (e.g., additional development, off-road vehicular use, competition with non-native vegetation, human intrusion, and numerous other human influences) that disrupt natural ecosystem processes. Further effects of habitat fragmentation on the two plant species are discussed in Factor E.

Projects that convert habitat from tidal marsh to diked seasonal wetlands potentially threaten both *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis.* Within Suisun Marsh, the conversion of tidal marsh to diked seasonal wetlands, a practice common in the development of waterfowl managements areas, is a potential threat for both species (Randall Brown, *in litt.* 1993). The planned conversion of 40 ha (100 acres) of salt grass (*Distichlis spicata*), an associated species for both *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis,* in Hill Slough as enhancement of habitat for wildlife (California Department of Water Resources (CDWR) 1984) will further diminish the amount of suitable habitat for these two plant species.

Habitat conversion for planned future urbanization threatens both species. In ABAG's analysis of the San Francisco Bay Estuary, over 4,856 ha (12,000 acres) of wetlands in the Bay will be subject to moderate to high development uses over the next 12 years (ABAG 1991). Highway expansion projects within the San Francisco Bay Estuary during the next 20 years are expected to fill 146 wetland ha (362 acres) (ABAG 1991). Some of the expansion projects will threaten *Cordylanthus mollis* ssp. *mollis* by eliminating additional habitat. Widening of California Highway 37 will threaten wetlands that occur along the Napa River (ABAG 1991) and may adversely affect habitat for *C. mollis* ssp. *mollis.* Proposed widening of Highway 12 near the Suisun Marsh would threaten the habitat of both plants (Brenda Grewell, pers. comm. 1993), either due to habitat fragmentation as discussed above or by runoff.

Projects that alter the natural tidal regime also threaten both taxa. The Western Suisun Marsh Salinity Control Project (CDWR and U.S. Bureau of Reclamation (USBR) 1991, CDWR and USBR 1993) is proposed to lower channel salinity in the western portion of Suisun Marsh to comply with water quality standards specified by the State Water Resources Control Board's Water Right Decision 1485. Project alternatives initially proposed for this project include the Cutoff Slough Water Delivery System, Cordelia-Goodyear Ditch, and the Boynton-Cordelia Ditch. The proposed Cutoff Slough Water Delivery System includes tide gates that would threaten tidal marsh by subjecting it to higher water elevations and converting the area to a natural water storage reservoir (Randall Brown, CDWR, *in litt.* 1993). Although this proposed alternative initially has been eliminated, this project is still in the proposed stage and has not been finalized.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization currently is not known to be a factor for these two plants. Increased collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result, however, from increased publicity resulting from publication of this proposal.

C. Disease or Predation

The health of one of the largest occurrences of *Cordylanthus mollis* ssp. *mollis* is declining due to insect predation (Brenda Grewell, pers. comm. 1993). Intense insect seed predation has been observed in the population at Joice Island and Hill Slough within Suisun Marsh in Solano County (Randall Brown, *in litt.* 1993). Neither disease nor predation is known to be a factor for *Cirsium hydrophilum* var. *hydrophilum*.

D. The Inadequacy of Existing Regulatory Mechanisms

Section 404 of the Clean Water Act represents the primary Federal law that affords some protection for these two plants. Under section 404 of the Clean Water Act, nationwide permits may be issued for certain activities that are considered to have minimal impacts, including oil spill cleanup, minor dredging, maintenance dredging of existing basins, and minor bank stabilization. Activities that do not qualify for authorization under a nationwide permit, including projects that would result in more than minimal adverse environmental effects, either individually or cumulatively, may be authorized by an individual or regional general permit, which are subject to more extensive review. Regardless of the type of permit deemed necessary under section 404, candidate species may receive no special consideration.

The Army Corps of Engineers (Corps) is the Federal agency responsible for administering the section 404 program. The Service, as part of the section 404 review process, provides comments on both pre-discharge notices for nationwide permits and public notices for individual permits. The Service's comments are only advisory, although procedures exist for elevation when disagreements between the agencies arise. In practice, the Corps' actions under section 404 are insufficient to protect these candidate plants.

CDFG has listed *Cordylanthus mollis* ssp. *mollis* as rare under the California Endangered Species Act (chapter 1.5 sec. 2050 *et seq.* of the California Fish and Game Code and title 14, California Code of Regulations 670.2). Listing by the State of California requires individuals to obtain a memorandum of understanding with the CDFG to possess or ''take'' a listed species. Although the ''take'' of State-listed plants is prohibited (California Native Plant Protection Act, chapter 10 sec. 1908 and California Endangered Species Act, chapter 1.5 sec. 2080), State law exempts the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the land owner notify the agency ''at least 10 days in advance of changing the land use to allow salvage of such a plant'' (Native Plant Protection Act, chapter 10 sec. 1913).

Under the California Environmental Quality Act (CEQA), the public agency with primary authority or jurisdiction over the project (the lead agency) is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. However, the lead agency may approve projects that cause significant environmental damage, such as the destruction of State-listed threatened and rare species, and does not always require adequate mitigation for the replacement or protection of the affected resources. The protection of species under CEQA is, therefore, dependent upon the discretion of the lead agency.

Legislation enacted by the State of California in 1977 provided for the preservation of Suisun Marsh. This legislation established primary and secondary management areas. The secondary management areas were established to provide a buffer against development. In 1982, the Preservation Act was amended to exclude, in the primary management area, land proposed for the Lawlor Ranch development. Exclusion of this land has reduced the buffer between urbanization and Suisun Marsh. The indirect effects of urbanization are discussed further in Factors A and E.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Both occurrences of *Cirsium hydrophilum* var. *hydrophilum* are adversely affected by non-native plants. *Lepidium latifolium* (perennial peppergrass), a rated noxious weed (California Department of Food and Agriculture 1993), has ''moved in especially in the last 5 years'' (Brenda Grewell, pers. comm. 1993). *Cirsium hydrophilum* var. *hydrophilum* is out-competed by *L. latifolium*. Hybridization with *C. vulgare* (bull thistle), a non-native, also is a potential threat. *Cirsium vulgare* hybridizes readily with other *Cirsium*. Hybridization with *C. vulgare* was suggested as a possible explanation for the previously presumed extinction of *C. hydrophilum* var. *hydrophilum* (Smith and Berg 1988).

Chronic pollution from petroleum products is an ongoing threat to the habitat of both plants within San Pablo Bay and southern Suisun Bay. Oil spills can result in severe and long lasting destruction of salt marsh vegetation. Studies on mangroves, seagrasses, salt marsh grasses, and algae have shown that petroleum causes death, reduced growth, and impaired reproduction in large plants (Albers 1992). The effects of a petroleum spill to plants depends on several factors including the time of year, the type of petroleum product (crude or refined), and the degree of coverage (Hershner and Moore 1977; Rob Ricker, CDFG, pers. comm. 1993). A plant entirely covered by oil will die. Oil that seeps into sediments can affect the roots or rhizomes of plants as well. Oil spills may also affect plants by decreasing the amount of plant biomass (either above or below ground), or by decreasing the reproductive capacity of the plant (Rob Ricker, pers. comm. 1993).

Four hundred to 800 oil spills occur annually within California (Rob Ricker, pers. comm. 1993). Within northern California, 309 reported spills affecting marine or estuarine habitats within the jurisdiction of the Service's Sacramento Field Office occurred between March 1992 and March 1993 (Office of Environmental Services (OES) 1992 and 1993). Most of these spills occurred in the San Francisco Bay Estuary.

In 1988, an oil spill in Martinez, California, flowed as far as Suisun Bay. Although these plants are found within the northern part of the Suisun Marsh and may not be threatened directly by an oil spill in San Francisco Bay, the potential for oil spills exists from vessels operating within the marsh, as well as from an accidental spill from railroads that bisect the marsh. Oil spills also are an ever present threat to *Cordylanthus mollis* ssp. *mollis* occurring near Point Pinole (Pat O'Brien, General Manager, East Bay Regional Parks District, *in litt.* 1994).

Chronic pollution from other sources also may threaten the habitat of both plants. It is unknown, however, what effects heavy metals in industrial discharges have on these two taxa. In 1978, 52 municipal treatment facilities and 42 industrial facilities continuously discharged wastewater into San Francisco Bay (Western Ecological

Services Company (WESCO) 1986). By 1982, over 200 permits for industrial discharges had been granted (WESCO 1986).

The amounts of heavy metals in the San Francisco Bay Estuary are projected to increase during the next 10 years. The San Francisco Bay Conservation and Development Commission, Center for Environmental Design Research, and the Greenbelt Alliance (1992) collectively modelled plausible land use changes and their impact to the health of the San Francisco Bay Estuary. Several methods were used to determine the effects of land use change including two future land use models. The model projecting the highest increase in heavy metal was based on a composite of the general plan maps for all of the counties in the estuary. Amounts of heavy metals including lead, nickel, and cadmium were projected to increase under both future land use models in all the watersheds that include habitat for these two plants.

As discussed in Factor A, habitat fragmentation may alter the physical environment. In addition, habitat fragmentation increases the risks of extinction due to chance events such as pest or disease outbreaks, reproductive failure, or other natural or human-caused disasters. The small, isolated nature of *Cirsium hydrophilum* var. *hydrophilum*, which has only two occurrences, makes extinction from stochastic (random) events more likely. Chance events, such as disease outbreak, oil spills, extended drought, or a combination of several such events, could destroy part of a single population or entire populations. The risk of extirpation due to genetic and demographic problems associated with small populations is a threat to at least the two occurrences of *Cordylanthus mollis* ssp. *mollis* that have fewer than 25 individuals.

Increases in foot traffic and mosquito abatement also will result from increased urbanization (Brenda Grewell, pers. comm. 1993). Mosquito abatement activities threaten *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. Within Suisun Marsh, both species grow along or near either first order channels or mosquito abatement drainage ditches. Cleaning or dredging along these channels may adversely impact individual plants due to their proximity to the mosquito abatement drainage ditches. Vehicular damage to plant populations parallel to these channels has been noted (Randall Brown, *in litt.* 1993).

Foot traffic is a threat to *Cordylanthus mollis* ssp. *mollis*. A trail runs through the occurrence located on East Bay Regional Park's Point Pinole Regional Seashore. Foot traffic also is a potential threat to the largest occurrence of *C. mollis* ssp. *mollis* due to the increased urbanization occurring within ¼ mile. Although foot traffic may create opportunities for *C. mollis* ssp. *mollis* to become established by reducing competition from *Salicornia*, this disturbance cannot be considered beneficial because *C. mollis* ssp. *mollis* plants have shallow roots, are very brittle, and can be easily damaged (Stromberg 1986).

Erosion is a threat to *Cordylanthus mollis* ssp. *mollis* located on the Point Pinole Regional Seashore. The main population of *C. mollis* ssp. *mollis* is immediately adjacent to a slough that is undergoing bank slumping (Stromberg 1986). Individual plants are threatened by the slumping and subsequent undercutting of the bank.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. *Cirsium hydrophilum* var. *hydrophilum*, limited to only two occurrences, is threatened variously by indirect effects of urbanization, vulnerability to extinction due to chance environmental events including oil spills, competition with non-native vegetation, projects that alter natural tidal regime, stochastic events, and inadequate regulatory mechanisms across all of its current range. Urbanization, industrial development, and agricultural land conversion have extirpated or potentially extirpated nearly 45 percent of known occurrences of *Cordylanthus mollis* ssp. *mollis*. The species currently is restricted to about 8 ha (20 acres) of habitat. Indirect effects of urbanization including habitat fragmentation, habitat conversion, alteration in water and salinity levels, inadequate regulatory mechanisms, mosquito abatement activities (including off-highway vehicle use), water pollution, insect predation, projects that alter natural tidal regimes, erosion, foot traffic, and extirpation due to genetic and demographic problems variously continue to threaten most occurrences of *C. mollis* ssp. *mollis* across its remaining range. Because *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* are in danger of extinction throughout all or a significant part of their respective ranges, they fit the definition of endangered species in the Act. The preferred action, therefore, is to list *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* as endangered. Other alternatives to this action were considered but not preferred because not listing them at all or listing them as threatened would not provide adequate protection and would not be in keeping with the Act.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed. The Service finds that designation of critical habitat is not prudent for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The listing of these species under the Act publicizes the rarity of these plants and, thus, can make these plants attractive to researchers or collectors of rare plants. Incidents of collection or vandalism could contribute to the decline of the species.

Critical habitat designation for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* is not prudent due to lack of benefit. Most populations of the two taxa occur on private or State lands. Because both plant species occur at very few locations, any activity that would adversely modify critical habitat would likely jeopardize the continued existence of the species as well. The designation of critical habitat on private or State lands affords no additional

benefit for these species over that provided as a result of listing.

Protection of the habitat of these species will be addressed through the section 4 recovery process and the section 7 consultation process. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. For the reasons discussed above, the Service finds that the designation of critical habitat for these plants is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

One occurrence of *Cordylanthus mollis* ssp. *mollis* occurs on land that is managed by the U.S. Navy. The USBR and the Corps would become involved with these plants through their funding of projects that may directly impact the plants' habitat or support development of areas that contain suitable salt or brackish marshes. The Corps also would be involved as an authorizing agency for permits to dredge or fill wetlands and navigable waters of the United States. The Corps regulates dredging and filling of jurisdictional wetlands and navigable waters, including salt water marshes, under section 404 of the Clean Water Act. By regulation, nationwide permits may not be issued where a federally listed endangered or threatened species may be affected by the proposed project without first completing consultation pursuant to section 7 of the Act. The presence of a listed species would highlight the national importance of these resources. Highway construction and maintenance projects that receive funding from the Department of Transportation (Federal Highway Administration) also would be subject to review under section 7 of the Act.

Listing *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* as endangered would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The recovery plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of the two species. Additionally, pursuant to section 6 of the Act, the Service could grant funds to affected States for management actions promoting the protection and recovery of these species.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Most occurrences of both plants are either on private or non-Federal lands. One population of *Cordylanthus mollis* ssp. *mollis* occurs on land managed by the Department of Defense (U.S. Navy). Collection, damage or destruction of this species on public lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Removal, cutting, digging up, damaging or destroying endangered plants on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of State law or regulations or in violation of State criminal trespass law. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

The Act and its implementing regulations found at 50 CFR parts 17.61, 17.62, and 17.63 for endangered plant species set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to the two plants from the San Francisco Bay area, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. Activities that would violate section 9 of the Act include the import, export, delivery, receipt, carrying, transporting, or shipping such species in interstate or foreign commerce in the course of a commercial activity; the sale or offer for sale of such species in interstate or foreign commerce; removal and reduction to possession of federally listed plant species from areas under Federal jurisdiction; the malicious damage or destruction of any such plant species on any area under Federal jurisdiction; or the removal, cutting, digging up, damage, or destruction of any such plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Activities that are unlikely to violate section 9 of the Act include animal grazing, waterfowl hunting, bird watching, and fishing. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR parts 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. The Service anticipates few permits would ever be sought or issued for the two species because the plants are not common in cultivation or in the wild.

Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181 ((503) 231–2063 or FAX (503) 231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any

other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis;*

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject areas and their possible impacts on these species.

The Service particularly solicits expert opinion from independent specialists regarding pertinent scientific or commercial data and assumptions relating to taxonomy, population models, and supportive biological and ecological information. Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Kirsten Tarp, U.S. Fish and Wildlife Service, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
	*	*	*	*	*		
Cirsium hydrophilum var. *hydrophilum.*	Suisun thistle	U.S.A. (CA)	Asteraceae	E		NA	NA
	*	*	*	*	*		
Cordylanthus mollis ssp. *mollis.*	Soft bird's-beak	U.S.A. (CA)	Scrophulariaceae	E		NA	NA
	*	*	*	*	*		

Dated: February 8, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–14144 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–55–P

federal register

Monday
June 12, 1995

Part VI

Department of Transportation

Federal Highway Administration

23 CFR Part 655

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 95–8]

RIN 2125–AD57

National Standards for Traffic Control Devices; Revision of the Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, and recognized as the national standard for traffic control on all public roads. After the current 1988 Edition of the MUTCD was published, a decision was made by the FHWA on January 6, 1988, at 53 FR 236, to postpone rulemaking on all requests for revisions to the MUTCD except those changes which would signficantly impact safety. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134. This effort is still underway and as work progresses, many changes and modifications are being identified. The FHWA is inviting comments on proposed changes which have been received to date. As other changes are received, they will be published in a future rulemaking. These changes affect various parts of the MUTCD and are intended to expedite traffic, promote uniformity, improve safety and traffic control device application, and provide a clearer understanding of the principles contained in the MUTCD.

DATES: Submit comments on or before September 11, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95–8, Federal Highway Administration, Room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice of proposed amendments or a copy of the proposed text contact Mr. Ernest Huckaby, Office of Highway Safety, (202) 366–9064, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Room 3419, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 050–001–00308–2.

The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates, by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received.

This notice is being issued to provide an opportunity to comment on the desirability of proposed amendments to the MUTCD. Based on comments submitted in response to this notice and upon its own experience, the FHWA will issue a final rule concerning these requests.

Index of Requests

General Provisions (Part I)

(1) Request I–10(C)—Standardization of Traffic Control Devices on Private Property.

(2) Request I–12(C)—Add New Highway Classification for Special Purpose Roads.

Signs (Part II)

(3) Request II–118(C)—Standard Motorcycle Warning Sign.

(4) Request II–120(C)—Standard Warning Sign for Substandard Vertical Curves Over Railroad Crossing.

(5) Request II–138(C)—Stop Sign Placement.

(6) Request II–179(C)—Don't Drink and Drive Symbol Sign.

(7) Request II–193(C)—Logos on Specific Service Signs.

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(9) Request II–199(C)—Reclassify Reduced Speed Signs from Regulatory to Warning.

(10) Request II–204(C)—Golf Cart Crossing Symbol.

(11) Request II–205(C)—Mandatory Turn Sign Alternatives.

(12) Request II–209(C)—Signing for the Disabled.

(13) Request II–211(C)—Non-Carrier Airport Symbol.

(14) Request II–212(C)—Increased Letter Size of Street Name Signs.

(15) Request II–214(C)—Golf Course Recreational Area Symbol.

(16) Request II–215(C)—Regulatory and Street Name Signs on Same Post.

(17) Request II–218(C)—Reduce Number of Panels Shown on Directional Assemblies.

(18) Request II–224(C)—Cellular Phone Signing for Emergency Situations.

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(20) Request II–226(C)—General Motorist Service Signing for Alternative Fuels.

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(22) Request II–229(C)—General Service Sign (Truck Parking Symbol).

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(25) Request III–54(C)—Variation of Line Width and Spacing for Crosswalks.

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(33) Request VII–2(C)—School Bus Stop Ahead Symbol Sign.

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(34) Request VIII–26(C)—Maximum Flash Rate at Railroad Highway Grade Crossings.

(35) Request VIII–29(C)—Symbol for Railroad Advance Warning Sign.

(36) Request VIII–30(C)—Symbol for Number of Tracks Sign.

(37) Request VIII–36(C)—Signs and Markings for No Lane Change Zones at Railroad Crossings.

(38) Request VIII–37(C)—Fast Train Signs.

(39) Request VIII–38(C)—Supplementary Plaques on STOP and YIELD Signs Used at Railroad-Highway Grade Crossings.

(40) Request VIII–39(C)—Warrants for Warning Devices at Railroad-Highway Grade Crossings with High Speed Train Operations.

(41) Request VIII–40(C)—Placement of the Crossing Identification Number Tag.

Bicycle Facilities (IX)

(42) Request IX–6(I)—Marking Hazardous Bicycle Conditions.

Discussion of Requests

The FHWA proposes to act on the above requests as follows:

General Provisions (Part I)

(1) Request I–10(C)—Standardization of Traffic Control Devices on Private Property

In October 1989, the American Association of State Highway and Transportation Officials (AASHTO) submitted a policy resolution to the FHWA recommending that each State be encouraged to adopt section 15–117 of the Uniform Vehicle Code (UVC). This section of the UVC states that traffic control devices used on private property open to the public shall be installed and maintained pursuant to the standards contained in the MUTCD.

The FHWA concurs with and supports the AASHTO resolution because it would extend the provisions contained in the MUTCD to all streets and highways open to public travel, regardless of ownership. The FHWA proposes to add language to MUTCD section 1A–3 encouraging each State to adopt section 15–117 of the UVC.

(2) Request I–12(C)—Add New Highway Classification for Special Purpose Roads

An interagency task force comprised of representatives from the U.S. Forest Service, the National Park Service, the Bureau of Land Management, the Bureau of Indian Affairs, and the Federal Highway Administration conducted a study under the Coordinated Federal Lands Highway Technology Implementation Program (CTIP) to examine the MUTCD and identify those standards which should be revised to provide more reasonable and prudent application standards for roads with very low traffic volumes in remote rural areas.

The major thrust of the proposed change is to add a new highway classification to the MUTCD for special purpose roads and a new set of standards to address the special signing needs of these low volume, low speed roads. The recommendations in the report are to allow 18″ x 18″ signs for these special purpose roads. The CTIP committee did not define either low speed or low volume. However, the intent of the study was to address special purpose roads as defined in the AASHTO Policy on Geometric Design of Highways and Streets. These roads include recreation roads, resource development roads, and local service roads. The FHWA solicits comments on this proposal.

Signs (Part II)

(3) Request II–118(C)—Standard Motorcycle Warning Sign

The American Motorcycle Association requested that the MUTCD be amended to include a sign to warn motorcyclists of hazardous road conditions. The FHWA conducted an evaluation of seven possible designs to warn motorcyclists of grooved pavements, five which incorporated a motorcycle symbol with the words ''grooved pavement'' and two which used word messages only. Although symbolic signs are usually preferable because they can be understood more quickly than words, the motorcycle symbol signs in this study did poorly in the motorist comprehension test. The evaluation study indicated that this may be because the concept is a difficult one to portray based on typical usage of warning signs. Generally the hazard of which drivers are warned is portrayed within the diamond sign. Many of the test group subjects saw the signs as a warning to drivers of ''something'' and motorcycles ahead. An example of an incorrect response given was, ''Warning: Grooved Pavement and Motorcycles Ahead.''

Therefore, the FHWA recommends that in areas where road conditions may be particularly hazardous for motorcyclists, the State highway agencies should develop appropriate word message signs. The FHWA recommends using a rectangular warning panel with a word message such as ''Motorcycles: Watch for Grooved Pavements.'' Since MUTCD section 2C–40 already contains provisions which allow the design of warning signs for special conditions, the FHWA believes a change to the MUTCD is not required.

(4) Request II–120(C)—Standard Warning Signs for Substandard Vertical Curves Over Railroad Crossings.

At certain locations, there is a need to alert drivers, especially those that drive vehicles with low under clearance, of differences in elevation between an approach roadway and a railroad track bed. Low profile vehicles have the potential of getting stalled at these types of railroad crossings. This could lead to an accident with a train, or at the very least, disrupt traffic. In other instances, motorists could possibly lose control of their cars when traversing such crossings without sufficient advance warning.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has proposed a new MUTCD section 8B–11, Humped Crossings, which the FHWA proposes to include in the next edition of the manual. The NCUTCD is also developing an appropriate sign for this special situation. After the sign is developed, the FHWA will include both the text and the sign in a future notice of proposed rulemaking.

(5) Request II–138(C)—Stop Sign Placement

The current MUTCD Figure 2–2 shows a typical example for placement of Stop Signs at wide throat intersections. This figure represents an intersection that usually is designed for heavier than normal volumes of long wheelbase vehicles which require larger turning radii. A Stop line pavement marking is also shown with the Stop Sign. The Stop Sign can be appropriately placed a maximum of 50 feet from the stop line.

The NCUTCD and the City of Phoenix propose that this maximum distance be deleted so that intersections with greater radii are also covered.

The FHWA does not recommend placing the Stop Sign back more than 50 feet. Placing the Stop Sign at a maximum of 50 feet from the stop line keeps the sign well within the driver's cone of vision. Installing it back farther may place the sign so far from the stop line and the cross street that the intended operation may present confusion to the general motorist. Raised or marked islands and/or channelized intersections are alternative applications which may be used at these special locations.

(6) Request II–179(C)—Don't Drink and Drive Symbol Sign

The FHWA has received requests from concerned citizens and Mothers Against Drunk Driving (MADD) to include a symbol sign in the MUTCD to deter the drinking public from driving while intoxicated. The FHWA Office of Research and Development collected recognition and comprehension data for several variations of this sign. As a result of this research, the FHWA proposes to add the proposed symbol (as shown below) into MUTCD section 2B–44 ''Other Regulatory Signs,'' because it performed very well in the evaluation study and its message of ''drive sober'' covers both drivers under the influence of alcohol and drivers under the influence of illicit drugs. As proposed, the sign's legend and border would be black, the circle green, and the background white.

BILLING CODE 4910–22–P

Figure 1

BILLING CODE 4910–22–C

(7) Request II–193(C)—Logos on Specific Service Signs

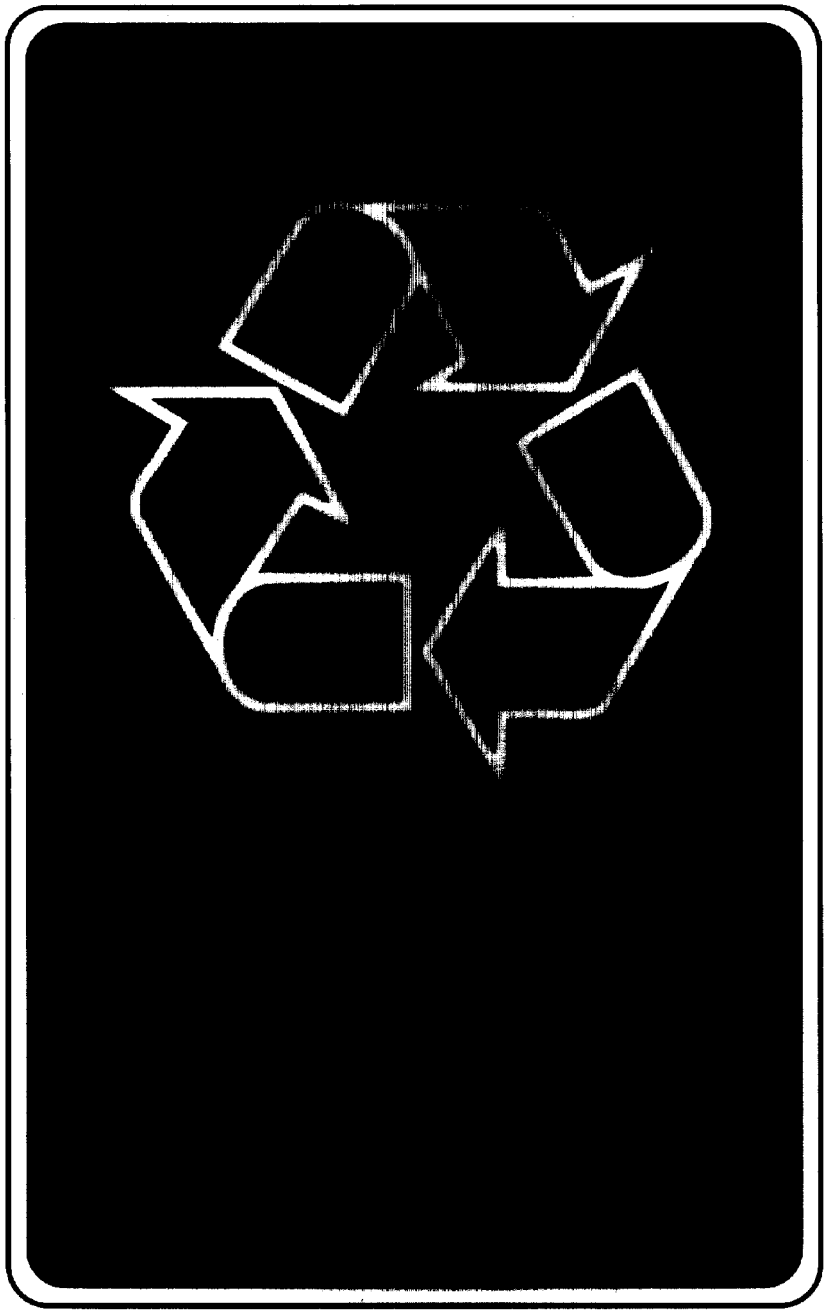
The NCUTCD has requested that the following sentence in MUTCD section 2G–5.2 be deleted: ''Logos should have a blue background with a white legend and border.'' Because of the way it is written, it seems to control corporate logo designs. It was not the intent of the FHWA to control corporate logo designs. The sentence is correct and should not be deleted, although the FHWA agrees that it could be more clearly written. Therefore, the following additional sentence is proposed: ''A business LOGO can be either a business identification symbol/trademark or a word message. If the business LOGO is a word message, then it should have a blue background with a white legend and border.'' This clarification will be included in the MUTCD rewrite effort.

(8) Request II–194(C)—Recycling Collection Center Sign

The Florida Department of Transportation recommended that the MUTCD include a Recycling Collection Center Sign in view of new State laws and initiatives to prevent waste and protect the environment. The purpose of the sign is to direct motorists to recycling collection centers. The recycling symbol suggested by Florida is the one developed for use by the Recycled Paperboard Division of the American Paper Institute of New York.

Since this symbol is already in use and recognized by the public, the FHWA proposes to include this symbol in MUTCD section 2D–48, ''General Information Signs.'' These signs should not be used on freeways and expressways. If used on these facilities, the recycling center sign should be considered as one of the supplemental sign destinations.

BILLING CODE 4910–22–P



COLORS
WHITE REFLECTIVE LEGEND AND BORDER
ON REFLECTIVE GREEN BACKGROUND

Figure 2

BILLING CODE 4910–22–C

(9) Request II–199(C)—Reclassify Reduced Speed Ahead Sign Series

Florida's Palm Beach County Department of Engineering and Public Works submitted a request to the FHWA to consider reclassifying the R2–5 series of signs as warning rather than regulatory signs. As presently worded, the R2–5 series signs convey an advance warning to motorists that there is a change in the regulatory speed limit ahead. Palm Beach County's proposed change would make the relationship between the ''Reduced Speed Ahead'' and ''Speed Limit'' signs similar to the relationship between the ''Stop Ahead'' and ''Stop'' signs.

The FHWA proposes to deny this request since, from a traffic operational standpoint, these signs perform adequately as regulatory signs. To change the present signs from black on white to black on yellow signs would impose an unnecessary cost burden to the State and local highway agencies.

(10) Request II–204(C)—Golf Cart Crossing Symbol

The FHWA received a request from both Virginia Beach, Virginia, and Palm Desert, California, to develop a warning symbol for golf cart crossings. The information received from Palm Desert's Public Works Department indicates that the golf cart is used in this area as an alternate, non-polluting source of transportation. They have indicated a need for not only a golf cart crossing symbol but also for a sign to warn motorists to share the roadway with these slower moving vehicles.

The FHWA is conducting a research effort to determine what type of signing is appropriate for safely accommodating these special-use vehicles along the roadway. The FHWA is also interested in receiving public comments and suggestions regarding this proposal.

(11) Request II–205(C)—Mandatory Turn Sign Alternatives

The FHWA received a request from a citizen in Florida who suggests that the Mandatory Movement Sign (R3–5) be optionally permitted as a post-mounted sign because the symbol appears to be more understandable than the mandatory turn word message sign (R3–7), particularly for persons speaking foreign languages.

The R3–5 symbol sign as discussed in MUTCD section 2B–17 is intended for overhead mounting and the R3–7 word message sign is intended for post mounting. These mandatory movement signs are included in a series of lane use control signs for the purpose of communicating lane designation information to the driver. These signs help position the motorist in the appropriate lane for the desired traffic movement.

The FHWA proposes to make the present requirements of the MUTCD less restrictive and allow either of the designated overhead and post-mounted signs to be used interchangeably. Such a change would impose no additional financial costs or burden on the State highway agency.

(12) Request II–209(C)—Signing for the Disabled

On July 26, 1991, the United States Architectural and Transportation Barriers Compliance Board published accessibility guidelines at 56 FR 35408 (36 CFR part 1191) which require that at least one in eight reserved parking spaces for the disabled be designed to accommodate vans. These parking spaces are required to be identified by a parking sign showing the international symbol of access (wheel-chair symbol) with a supplemental ''Van Accessible'' sign mounted below.

The MUTCD already contains a standard reserved parking sign (R7–8) for the disabled. However, it does not contain any discussion on the design and application of the new ''Van Accessible'' sign. Therefore, the FHWA proposes to include the ''Van Accessible'' sign as a supplement to the standard R7–8 regulatory sign. When used, this word message sign should have a white background with black or green legend. Reverse background and legend colors may be used as an alternate. Where a guide sign is needed to direct motorists to special van-accessible parking facilities, the proposed ''Van Accessible'' sign should have a white legend on blue background with an appropriate directional arrow.

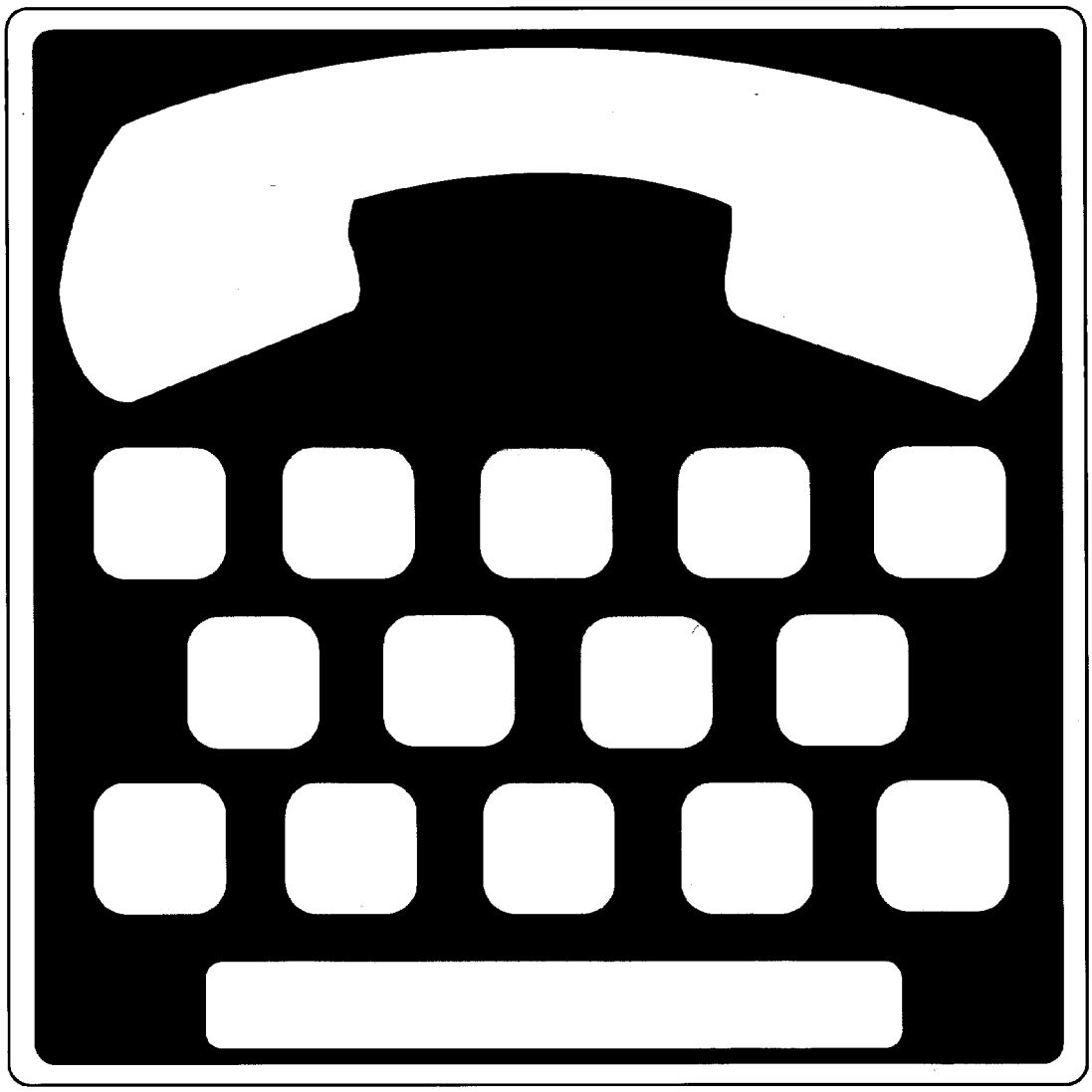
The FHWA proposes to add the design dimensions for this sign to the Standard Highway Signs Book and to add appropriate text to the MUTCD section 2B–31, ''Urban Parking and Stopping Signs.'' The FHWA believes that this proposed amendment would impose no significant financial burden on State and local highway agencies because the ''Van Accessible Sign'' is intended for use only at parking locations where traffic laws and statutes apply.

The accessibility guidelines at 36 CFR part 1191 also contain construction requirements for accessible buildings or facilities. The guidelines identify facilities and elements thereof which are required to be signed as accessible. Buildings required to be accessible shall use the international symbol of accessibility as shown in figure (a) below. In addition, building requirements are also provided for signing facilities which have public text telephones and assistive listening systems. The symbol for text telephones is shown in figure (b) and the symbol for assistive listening systems is shown in figure (c).

BILLING CODE 4910–22–P

(a)
International Symbol of Accessibility

FIGURE 3A



(b)
International TDD Symbol

FIGURE 3B

(c)
International Symbol of Access for Hearing Loss

Figure 3C

BILLING CODE 4910–22–C

The FHWA received a request from a citizen to install the telephone symbols along the Interstate system to direct motorists to the buildings and facilities which are accessible for the hearing impaired. The FHWA is soliciting public input as to whether or not this request has merit and can be practically implemented. Should such signs be used in conjunction with General Service signs and/or Specific Service signs, or could they stand alone? Once motorists were directed to the appropriate freeway exit, they would still need to be guided to the appropriate building or facility. Does a series of confirming sign assemblies need to be installed to reassure the traveler that they are headed in the right direction? Are the proposed sign designs legible to the motorist at high speeds? Will the motorist comprehend the intended sign message? What effect will this proposed change have on the local level? How is information of this nature currently made available to the hearing-impaired community?

Your response to these questions or any other comments which you may be able to provide will help us to reach an appropriate decision regarding this request.

(13) Request II–211(C)—Non-Carrier Airport Symbol

The AASHTO submitted a resolution to the FHWA recommending a new symbol sign in the MUTCD to identify non-carrier airports. Non-carrier airports are airports which do not provide commercial or scheduled air service.

The MUTCD section 2D–48, ''General Information Signs,'' contains provisions for signing routes leading to a transportation facility, including a symbol for airports. Rather than adopting a different symbol sign for non-carrier airports, the FHWA prefers the use of the standard airport symbol (I–5) along with a supplemental plaque to indicate the specific name of the non-carrier airport. The FHWA believes that this would be easier for the motorist to recognize and comprehend as opposed to trying to distinguish the difference between two airplane symbols. From a distance and at high speeds, the two airplane symbols could appear very similar to the motorist.

Although the FHWA does not intend to adopt a new symbol sign for non-carrier airports, it does propose to include a discussion in the MUTCD on these two types of airport signing. When used, these signs will be considered supplemental guide signs which are appropriate for use on the Interstate, other freeways, and conventional State highways. However, adequate trailblazing signs would have to be in place prior to installing these airport signs.

(14) Request II–212(C)—Increased Letter Size of Street Name Signs

The NCUTCD submitted a request to the FHWA to improve the visibility of street name signs by increasing the minimum letter size from 4 inches to 6 inches. If uppercase and lowercase letters are used, then the uppercase letters would be 6 inches with 4½ inch lowercase letters. Abbreviated lettering to indicate the type of street or section of city (e.g., Ave., N.W., etc.) would be at least 3 inches instead of 2 inches. The NCUTCD also recommends that retroreflectivity be required on all street name signs.

The FHWA recognizes the need to improve sign visibility and legibility, particularly for the older driver population. The Transportation Research Board (TRB) Special Report No. 218, ''Transportation in an Aging Society,'' identified highway and street name signs as a major concern for older drivers. The FHWA proposes to increase the letter size of signs and include the recommended dimensions in MUTCD section 2D–39. Since this proposed amendment would impose some additional costs on State and local highway officials, the FHWA would establish an implementation period.

(15) Request II–214(C)—Golf Course Recreational Area Symbol

The Montana Department of Transportation (MTDOT) submitted a request to the FHWA to include a symbol in the Recreational and Cultural Interest Area Signs (MUTCD section 2H) to direct motorists to golf courses. This symbol would be white on a brown background and it would be included in the RG or RL series.

The proposed symbol submitted by the MTDOT and shown below needs to be evaluated along with other possible designs to determine if they can be safely seen, read, and comprehended by the motorists without creating any traffic operational problems. The FHWA is soliciting comments on the proposed design. The FHWA is also interested in receiving other possible designs for evaluation purposes. The FHWA does not have any conclusive evaluation data at this time to make an informed decision concerning the proposed sign.

BILLING CODE 4910–22–P

Figure 4

BILLING CODE 4910–22–C

(16) Request II–215(C)—Regulatory and Street Name Signs on Same Post.

The Public Works Department in Cary, North Carolina, submitted a request to the FHWA to include the installation of a Street Name Guide Sign on the same post with a Regulatory Sign as a standard traffic control device application. After reviewing the evaluation report submitted by the North Carolina State University's Department of Civil Engineering, the FHWA finds that the proposal has merit as an alternate application and makes the following recommendations: (1) If the two signs are placed on one sign post, the proper location of the Regulatory Sign should not be compromised by the Street Name Sign; and (2) there should be vertical separation between the top and the bottom of both signs. This separation should not be less than 6 inches. This would make it clearer to the motorist that these are two distinct signs with two distinct messages.

The FHWA proposes to adopt this arrangement as an alternate application since its use may simplify the sign installation process and improve motorist guidance information. Since this amendment would impose no requirements or additional costs on highway agencies, the FHWA believes an implementation period would not be necessary.

(17) Request II–218(C)—Reduce Number of Panels Displayed on Directional Assemblies.

A citizen from Richmond, Virginia, has requested a change to directional assembly installations to reduce the amount of information displayed. Instead of displaying a route shield and route number for each direction of travel, the route marker assembly would display only one route shield and route number with appropriate cardinal directions and arrows.

BILLING CODE 4910–22–P

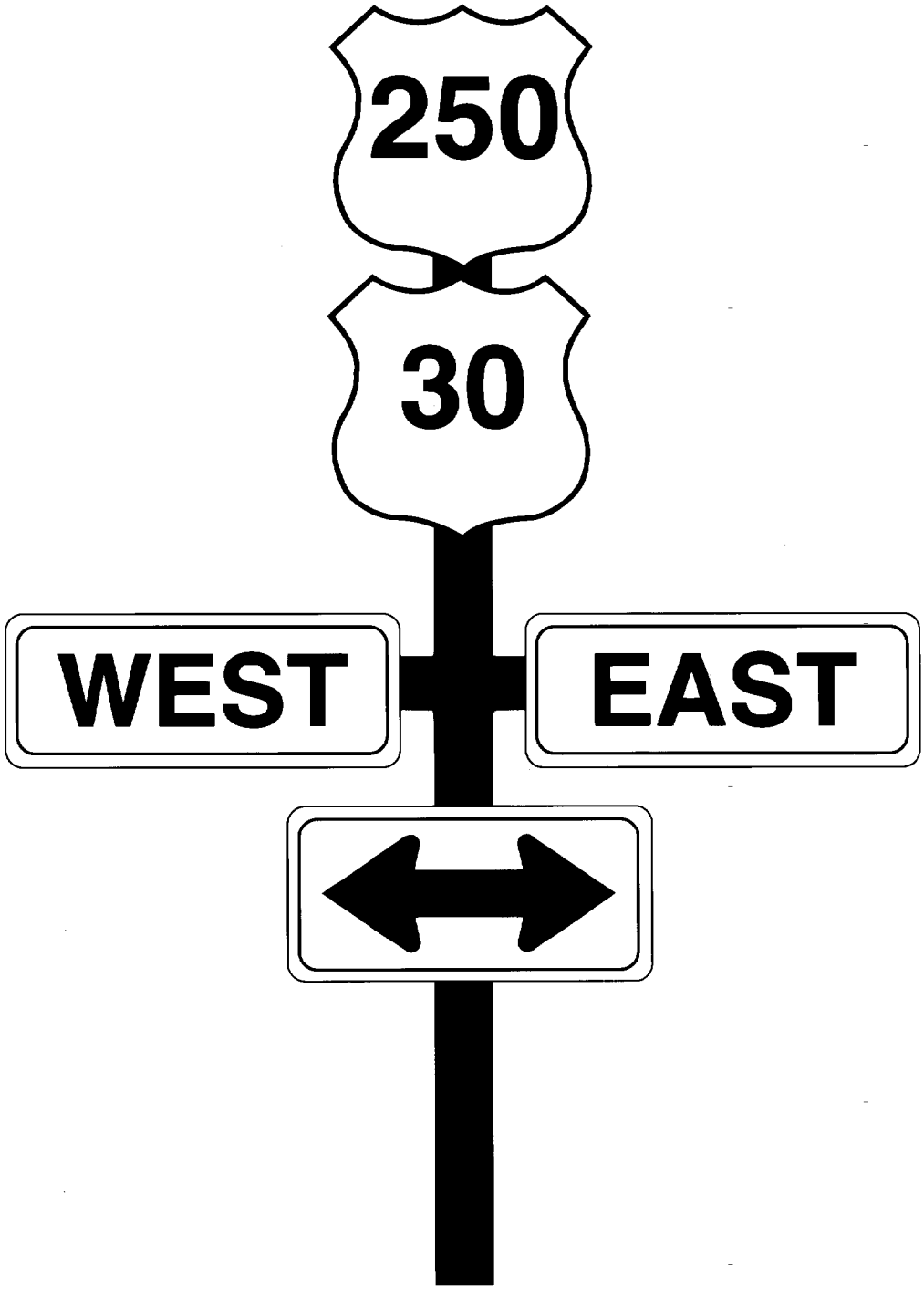


Figure 5

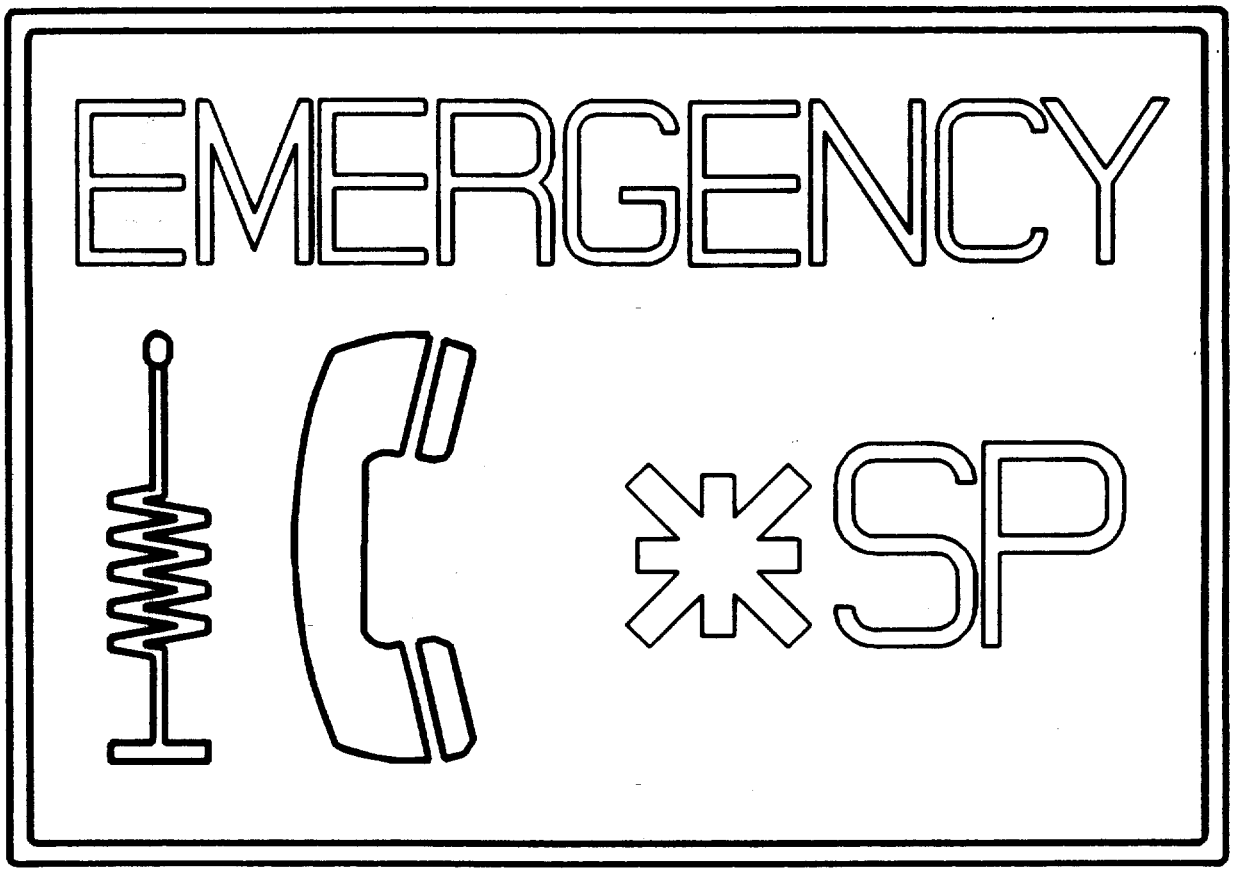
BILLING CODE 4910–22–C

The FHWA proposes to adopt this request for change as an optional application for use in situations where an engineering study determines that motorist confusion would not result. This proposal would impose no additional requirements or costs on highway agencies; therefore, an implementation period would not be necessary.

(18) Request II–224(C)—Cellular Phone Signing for Emergency Situations.

The Massachusetts Highway Department has submitted a request to include a State Police Cellular Phone Sign into the MUTCD. The proposed sign (as shown below) contains the standard telephone symbol (D9–1) and the standard police sign (D9–14). One of the prerequisites for adopting any proposed sign is that the sign message must be uniformly understood by motorists and not create traffic safety or operational problems. Consideration is given to the sign's target value, conspicuity, and legibility. The FHWA is concerned that the antenna shown in the proposed sign drawing may not be legible to the motorist at certain distances and speeds. The FHWA is also concerned that some motorists may not comprehend the sign's intended message.

BILLING CODE 4910–22–P



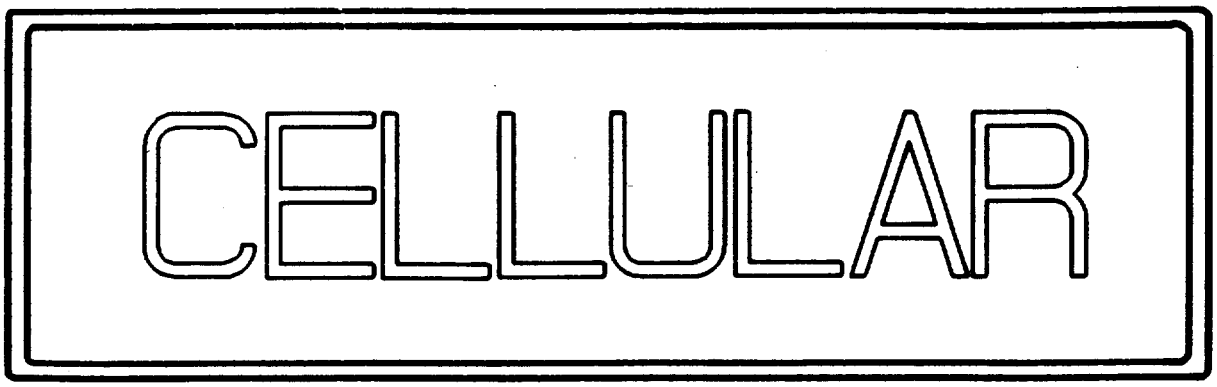


Figure 6

BILLING CODE 4910–22–C

Therefore, the FHWA recommends using a word message sign similar to the standard D12–3 sign. The sign would read, ''Police Monitor Cellular Phone'' along with the appropriate number to dial (which may vary from region to region). This proposal would impose no requirements or additional costs on highway agencies.

(19) Request II–225(C)—Local Transit Logo and Carpool Symbol

The Texas Department of Transportation (TXDOT) submitted a request to the FHWA to allow the maximum vertical dimension of transit system logos on Park and Ride Signs to be increased to 36 inches for freeways and expressways. Currently, MUTCD section 2D–41 specifies a maximum logo size of 18 inches.

The FHWA concurs in this request. Larger signs provide greater legibility on high speed facilities such as freeways and expressways. Therefore, the FHWA proposes to change the last sentence in the second paragraph of MUTCD section 2D–41 to read, ''The maximum vertical dimension of the local transit logo and/or carpool symbol is 36 inches.'' This amendment would impose no additional requirements or costs on highway agencies.

(20) Request II–226(C)—General Motorist Service Signing for Alternative Fuels

The FHWA has received a second request from the TXDOT asking us to expand the provisions for General Motorist Services Signs to include an additional category of ''Alternative Fuels.'' This signing would include the following fuels: propane, compressed natural gas, ethanol, and methanol. The TXDOT proposal recommended installing a separate, stand-alone service sign dedicated to alternative fuels. This service sign would be separate from the conventional general motorist services.

The FHWA agrees that the increasing number of vehicles using alternative fuels (in response to, among other things, the Clean Air Act Amendments of 1990) warrants consideration of additional signs meant to provide availability information to motorists, particularly on freeways. The FHWA solicits public comments and suggestions concerning this proposal. The FHWA is also interested in receiving any typical application drawings to show how these signs may be installed, if adopted.

(21) Request II–228(C)—''Share the Road'' Warning Signs

A citizen from Rudolph, Ohio, supported by a number of Farm Bureaus in the State of Ohio requested that the FHWA improve the standard highway farm machinery symbol sign (W11–5) to more accurately depict modern farm equipment. In addition, the sign should warn motorists to watch for slow moving farm machinery not only crossing the roadway but also traveling along the roadway.

The FHWA agrees that there is a need for a series of signs to warn motorist to ''share the road'' with various roadway transportation modes. ''Share the road'' signs have been requested for not only farm machinery but, also for golf carts and bicycles.

The FHWA is conducting a research study to develop an appropriate sign for these situations. Public comments and suggestions are welcomed. Our goal is to find a method of communicating to the driver these two related but different warning messages: (1) crossing the roadway and (2) traveling along the roadway.

(22) II–229(C)—General Service Sign (Truck Parking Symbol)

This request from the Michigan Department of Transportation (MDOT) is to include ''TRUCK PARKING'' as an eligible message which can be included on General Service Signs as discussed in MUTCD sections 2D–45, 2E–37, and 2F–33. This sign is only to be used where public or private parking facilities are provided near a freeway or expressway interchange.

The MDOT has experimentally used these signs since 1990 and has found the number of illegally parked trucks on shoulders and ramp acceleration/deceleration lanes has dropped, with a substantial reduction in accidents and fatalities. In addition, truck use of rest areas has decreased while use of privately managed truck stops has increased.

While symbol signing is used for other General Service Signs, this request is to use the word message ''TRUCK PARKING'' above these symbols as shown in the diagram below. The FHWA supports the overall concept of this proposal and invites comments on the concept of using the word message ''TRUCK PARKING'' with other general service symbol signs. We also welcome suggestions for a ''TRUCK PARKING'' symbol.

BILLING CODE 4910–22–P

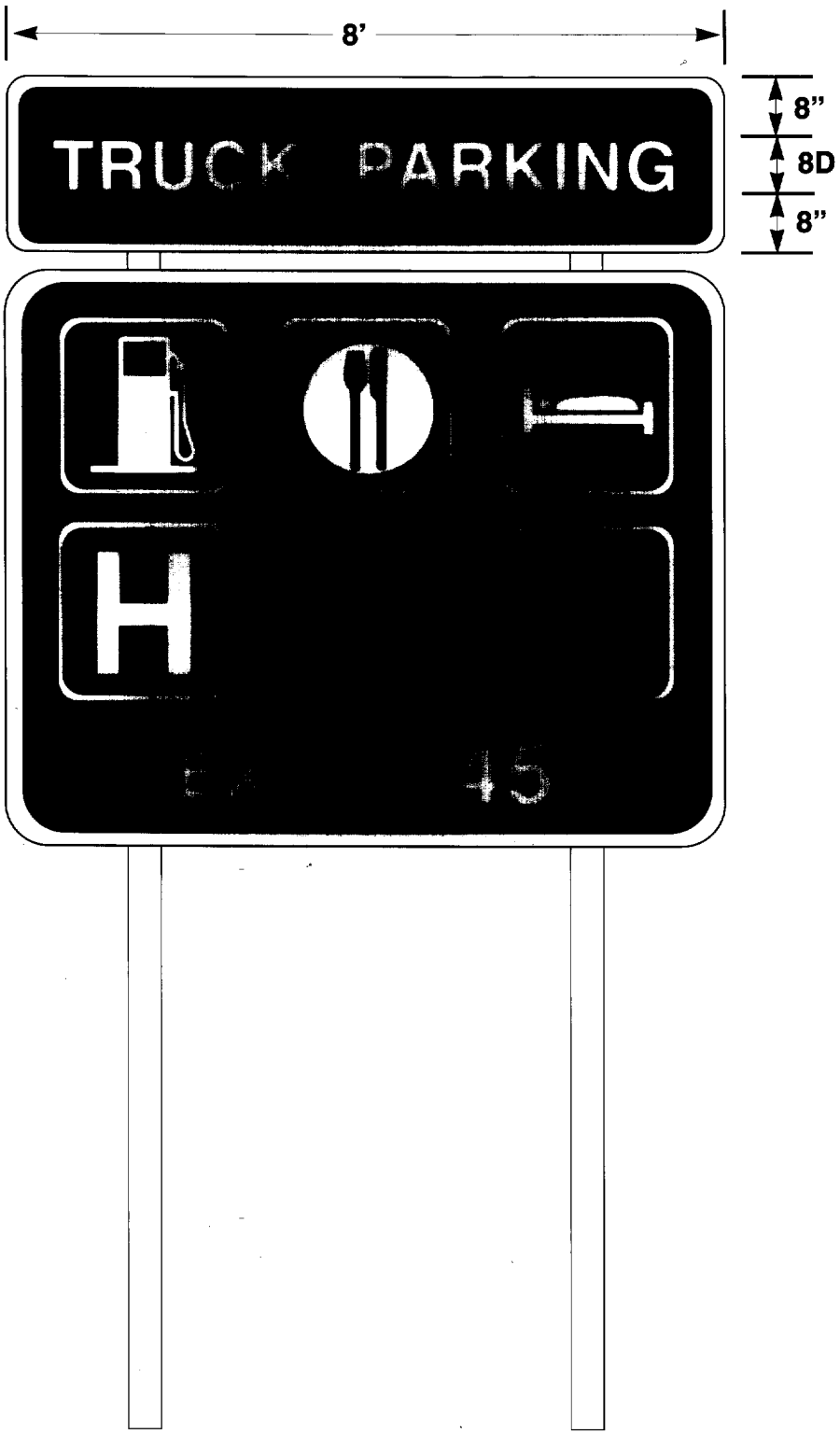


Figure 7

BILLING CODE 4910–22–C

(23) Request II–241(C)—Overhead Guide Sign Arrows

The FHWA received a request from a citizen in Hartsdale, New York, concerning improving overhead guide signs by using consistent directional arrows which point upwards and which indicate if the roadway turns to the left or to the right. This suggestion is based on the belief that the current downward pointing arrows are misleading and confusing to the motorist. In MUTCD sections 2D–8 and 2E–15 downward pointing arrows are currently classified as pull-through arrows for the purpose of assigning proper lanes for traffic continuing along a specified route. However, the citizen sugggests that this intended message is neither helpful nor even understood by many motorists.

The FHWA is considering this request for change, since it has the potential to provide more consistent, timely, and useful information to the motorist. The FHWA is soliciting comments on the feasibility and effect of implementing this proposed change to the MUTCD.

(24) Request II–246(C)—Adopt-A-Highway Signs

The Adopt-A-Highway Program provides free litter removal to the jurisdiction responsible for roadway maintenance in exchange for the right to display a small sign recognizing the group removing the litter. Since the program's inception in the fall of 1985, at least 34 States now have implemented Adopt-A-Highway Programs. Some of the States using the program limit participation to civic groups, while others allow display of commercial messages. There is also a wide variance in the size of the recognition signs allowed to be displayed within the highway right-of-way, varying from 2 feet by 4 feet to 6 feet by 12 feet. In addition, the background and letter color of these signs varies from State to State. There is also variance in the lateral placement and the frequency of placement of these signs.

The FHWA proposes to include standards for the Adopt-A-Highway sign in MUTCD section 2D–48, General Information Signs. We are interested in recommendations regarding maximum and minimum sizes, background and message colors, and sign placement criteria, including lateral placement and frequency of placement.

Markings (Part III)

(25) Request III–54(C)—Variation of Line Width and Spacing for Crosswalks

The Kansas Department of Transportation (KSDOT) and the NCUTCD have requested a change to section 3B–18 of the MUTCD. The last paragraph of this section of the MUTCD currently states that the longitudinal crosswalk lines should be spaced 12 to *24* inches apart. This proposed change would increase the maximum spacing from 24 to *48* inches with a maximum spacing not to exceed twice the line width.

Presently, we have no statistical data to show that the proposed maximum spacing of 48 inches will not adversely affect visibility. The possibility exists that a crosswalk area could end up with only one longitudinal marking on a 12-foot roadway. The FHWA agrees that from an installation and maintenance standpoint the use of wider spacings is more economical. However, the FHWA does not wish to see pedestrian safety compromised. The current maximum longitudinal spacing of 24 inches is so the crossing area will be highly visible and recognizable both for the motorist and for the pedestrian.

The FHWA hesitates to change the MUTCD without evaluation data which supports the design safety of the proposed crosswalk configuration. Since there are no operational problems relative to the standard 24-inch maximum spacing, the FHWA intends to deny this request for change.

(26) Request III–68(C)—Lane Drop Marking Pattern.

The Montgomery County Department of Transportation in Rockville, Maryland, has requested that MUTCD section 3A–6 be modified to include the lane drop marking pattern since this section of the MUTCD contains descriptions for various widths and patterns of longitudinal lines. Lane drop marking patterns are currently described in the fourth paragraph of MUTCD section 3B–11. Since section 3A–6 describes widths and patterns of longitudinal lines, the FHWA agrees that the lane drop marking pattern should also be included in this section of the MUTCD.

Additionally, Montgomery County suggested that the term ''special marking'' as used in the fourth paragraph of section 3B–11 should be changed to ''lane drop marking'' and that the use of this marking pattern should not be restricted to interchange ramps, but should also be available for use with mandatory lane drops on arterial streets and highways.

In order to further consistency and clarity in traffic operation messages, the FHWA proposes to adopt the above changes to the MUTCD. These amendments would impose no additional requirements or costs on highway agencies.

Signals (Part IV)

(27) Request IV–47(C)—Use of Steady and Flashing Yellow Arrows in Lane Control Signals

The Minnesota and Texas Departments of Transportation (MNDOT and TXDOT) have proposed MUTCD changes to the YELLOW lane-use control signal indication used on freeways. The MNDOT also proposed changing the MUTCD to allow darkening of lane control signals that are used for non-reversible freeway lane operation.

MUTCD Section 4E–9 provides the following meanings for YELLOW lane-use control signal indications:

1. A steady YELLOW X means that a driver should prepare to vacate, in a safe manner, the lane over which the signal is located because a lane control change is being made. The driver should avoid occupying that lane when a steady RED X is displayed.

2. A flashing YELLOW X over a lane means that a driver is permitted to use that lane for a left turn. The driver is cautioned that he may be sharing that lane with opposite flow left-turning vehicles.

The MNDOT identified a need to provide an additional signal message when incidents, maintenance activities, or congestion require drivers using these reversible lanes to exercise caution. MNDOT conducted an experimentation with two new lane use control signal indications:

1. A steady Downward YELLOW ARROW meaning the same as a steady YELLOW X.

2. A Flashing Downward YELLOW ARROW meaning that a driver is permitted to cautiously use the freeway lane over which the signal is located.

The research showed that 84% of the respondents interpreted the proposed steady YELLOW ARROW as meaning the driver may use this lane, but should use extra caution. The intended meaning should have been the same as the steady YELLOW X definition above. The understanding rate for the proposed Flashing Downward YELLOW ARROW was 50% which means that one-half of the respondents incorrectly interpreted its meaning.

In order to not mislead drivers, the MNDOT also proposed darkening the lane control signals when they were not in operation.

The TXDOT provided an alternate proposal to keep the MUTCD meanings for lane-use control signals and add a new lane control indication—a steady

Downward YELLOW ARROW. The meaning of this new lane control indication would be that the driver can use this lane with caution. However, because of the lack of understanding of the Flashing and Steady Downward YELLOW ARROWS FHWA does not support this proposed change to the MUTCD.

The FHWA proposes the following:

1. To revise MUTCD section 4E–12 to allow darkening of lane control signals that are used on non-reversible freeway lanes;

2. To deny the MNDOT's request for change in the MUTCD relative to the use of steady and flashing YELLOW ARROW lane control signals;

3. To deny the TXDOT's request for a change to allow the use of steady YELLOW ARROW lane control signals; and

4. To permit the MNDOT and the TXDOT to conduct further experimentation in the use of steady and flashing yellow arrow lane control signals.

The NCUTCD concurs with the FHWA's position. The proposed change to allow darkening of lane control signals on non-reversible freeway lanes would impose no additional cost on highway agencies.

(28) Request IV–95(C)—Intersection Control Beacons

The Military Traffic Management Command, Department of the Army, suggested that two beacons and a stop sign should be required on each intersection approach controlled by a ''RED'' Intersection Control Beacon. An Intersection Control Beacon consists of one or more sections of a standard traffic signal head, having flashing CIRCULAR YELLOW or CIRCULAR RED indications in each face.

The FHWA believes that in the majority of situations, one signal indication would provide adequate visibility. However, for added visibility the first paragraph of section 4E–3 already allows the use of supplemental beacons.

To provide a back-up for the Intersection Control Beacon in the event of a bulb burn out, the NCUTCD proposed that a mandatory requirement for a STOP sign is necessary. The FHWA agrees, and proposes to amend the MUTCD to require a STOP sign as backup for the Intersection Control Beacon. This amendment would impose no significant increase in costs to highway agencies.

(29) Request IV–118(C)—Relocate Section 4C, Signal Warrants

The NCUTCD has requested that MUTCD section 4C, ''Warrants for Traffic Signals,'' be relocated before section 4B, ''Traffic Control Signals.'' This text relocation will allow a user of the MUTCD to determine if signals are justified before looking at the text that describes signals and their design.

The FHWA supports this proposed amendment. This amendment would impose no additional costs on highway agencies.

(30) Request IV–122(C)—Disabled Pedestrians

A citizen in Marysville, California, suggested that the MUTCD be revised to better address the needs of older and disabled pedestrians. It was suggested that pedestrian detectors (usually push button) be easily activated for pedestrians with physical disability. It was also suggested that a system, known as the ''Turtle Crosswalk'' and developed at the University of Alberta, be implemented at intersections where pedestrian signals are installed. This system provides a second push button that allows additional time for slower walking pedestrians to cross the roadway. The second button would only be activated by pedestrians needing additional time to cross the roadway.

The FHWA agrees with this amendment and proposes to add the following paragraph after the first paragraph in section 4B–29:

Pedestrian detectors (push buttons) should be easily activated. At signalized intersections with demonstrated need, a second detector with instructional signing may be installed to provide additional crossing time for slower walking pedestrians.

This amendment may impose some additional costs on highway agencies; therefore, an implementation period would be established.

(31) Request IV–124(C)—Educational Plaque for Pedestrian Signals

The City of San Buenaventura, California, developed a sign to improve pedestrian understanding of the WALK and DONT WALK indications at signalized intersections. The sign is proposed to be used at locations with either word or symbol pedestrian crossing messages. The signs would be installed where at least 10 pedestrians an hour use the crosswalk and at other high traffic-generating areas, such as, hospitals and schools.

The FHWA does not feel that the sign should be mandatory at all intersections where pedestrian indications are located. The location for these signs should be left to engineering judgment. The sign design and wording is shown below. Alternative designs or wording are welcome.

BILLING CODE 4910–22–P

Figure 8

BILLING CODE 4910–22–C

The FHWA is soliciting public comments and suggestions concerning this proposal.

(32) Request VI–88(C)—Emergency Flashers

Southern Bell requested that section 6F–7c of Revision 3 to the MUTCD be amended to allow the use of emergency flashers on maintenance vehicles during normal daytime maintenance operations.

Southern Bell operates a large number of small service vehicles that provide telecommunication services to businesses and residential homes. Southern Bell feels that the operation of emergency flashers, in addition to rotating domes and strobe lights, are appropriate for these vehicles.

After review of this matter, the FHWA has found no research or operational experience that shows emergency flashers create an unsafe condition. Accordingly, the FHWA proposes to allow the use of emergency flashers on maintenance vehicles during normal daytime maintenance operations. This would give public agencies an alternative method for displaying flashing beacons.

(33) Request VII–2(C)—School Bus Stop Ahead Symbol Sign

The North Carolina Department of Transportation has submitted a symbol sign for use as an alternate to the ''School Bus Stop Ahead'' word messsage sign. The proposed warning sign depicts a bus with the extended signal arm with the Stop Sign as shown below.

BILLING CODE 4910–22–P

Figure 9

BILLING CODE 4910–22–C

Since the MUTCD does not contain a symbol for the school bus sign, the FHWA proposes to adopt the symbol sign shown above and include it as an option in MUTCD section 7B–11. This proposal would not impose any additional financial burden on the State and local highway agencies.

(34) Request VIII–26(C)—Maximum Flash Rate at Railroad Highway Grade Crossings

This request is from the NCUTCD. The MUTCD currently requires that flashing light units at railroad-highway grade crossings shall flash alternately. Each incandescent lamp shall flash between a minimum of 35 and a maximum of 55 flashes per minute. The AAR Signal Manual of Recommended Practices has recommended flash rates of 45 minimum and 65 maximum per minute. The Railroad-Highway Grade Crossing Handbook discusses flash rates between a minimum of 45 and a maximum of 65. These higher flash rates are supported by research. Some railroads are already reportedly using equipment that provides flash rates up to 60 per minute.

In order to insure that all three of the above documents are compatible, it is recommended that the MUTCD be revised to provide for a flash rate of 35 minimum and 65 maximum. This change will impose no additional requirements or additional costs. The FHWA supports this change.

(35) Request VIII–29(C)—Symbol for Railroad Advance Warning Sign

This request from a private citizen in Chelterham, Pennsylvania, is to replace the standard round Railroad Advance Warning Sign (W10–1) with diamond shaped sign(s) as shown below. The rational for this change is that the proposed warning signs are similar to other standard warning sign ''crossing'' messages as contained in the MUTCD.

The FHWA is not in favor of this proposal. The round Advance Warning Sign is intentionally unique from other warning signs and is intended to convey to motorists the special attention they need to apply when approaching a railroad-highway grade crossing.

BILLING CODE 4910–22–P

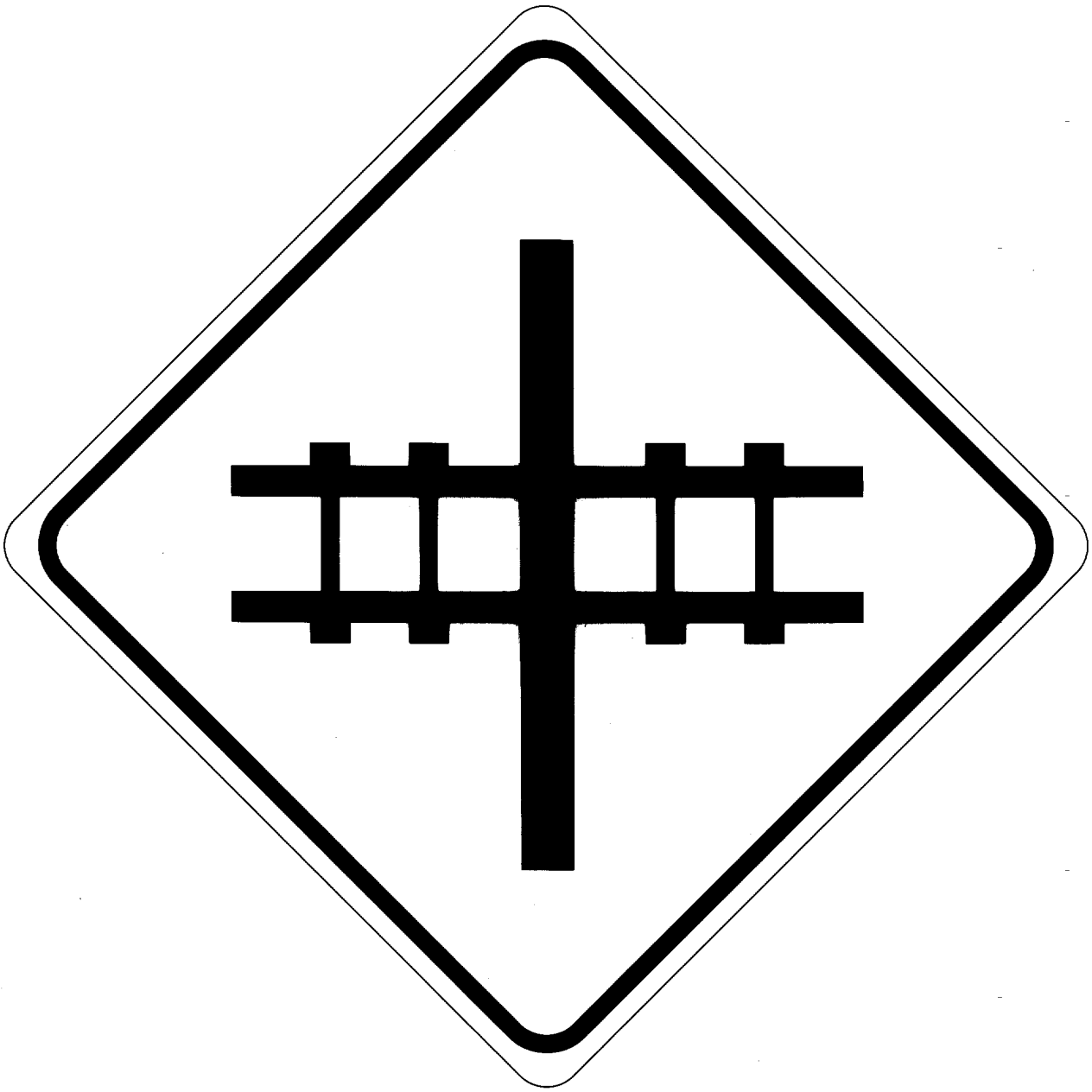


Figure 10

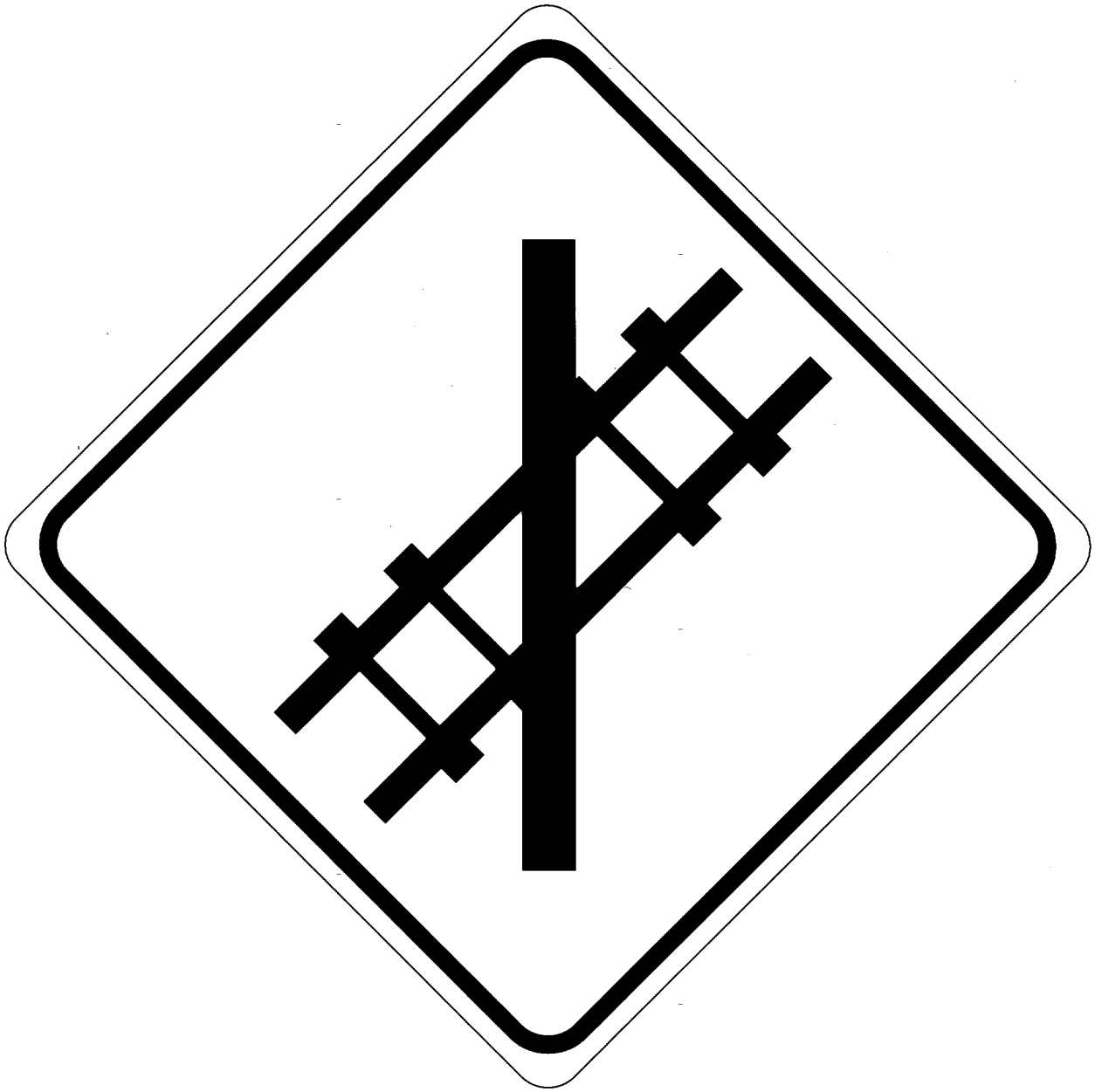


Figure 11

BILLING CODE 4910–22–C

(36) Request VIII–30(C)—Symbol for Number of Tracks Sign

This request from a private citizen in Chelterham, Pennsylvania, is to replace the standard Number of Tracks Sign (R15–2) with a symbol sign showing tracks instead of the word ''TRACKS.'' The symbol is shown below. The purpose stated for this request is to provide better understanding of traffic control signs for non-English speaking drivers.

The FHWA proposes to deny this request. The FHWA does not have any data to indicate that the standard Number of Tracks Sign is misunderstood by drivers.

BILLING CODE 4910–22–P

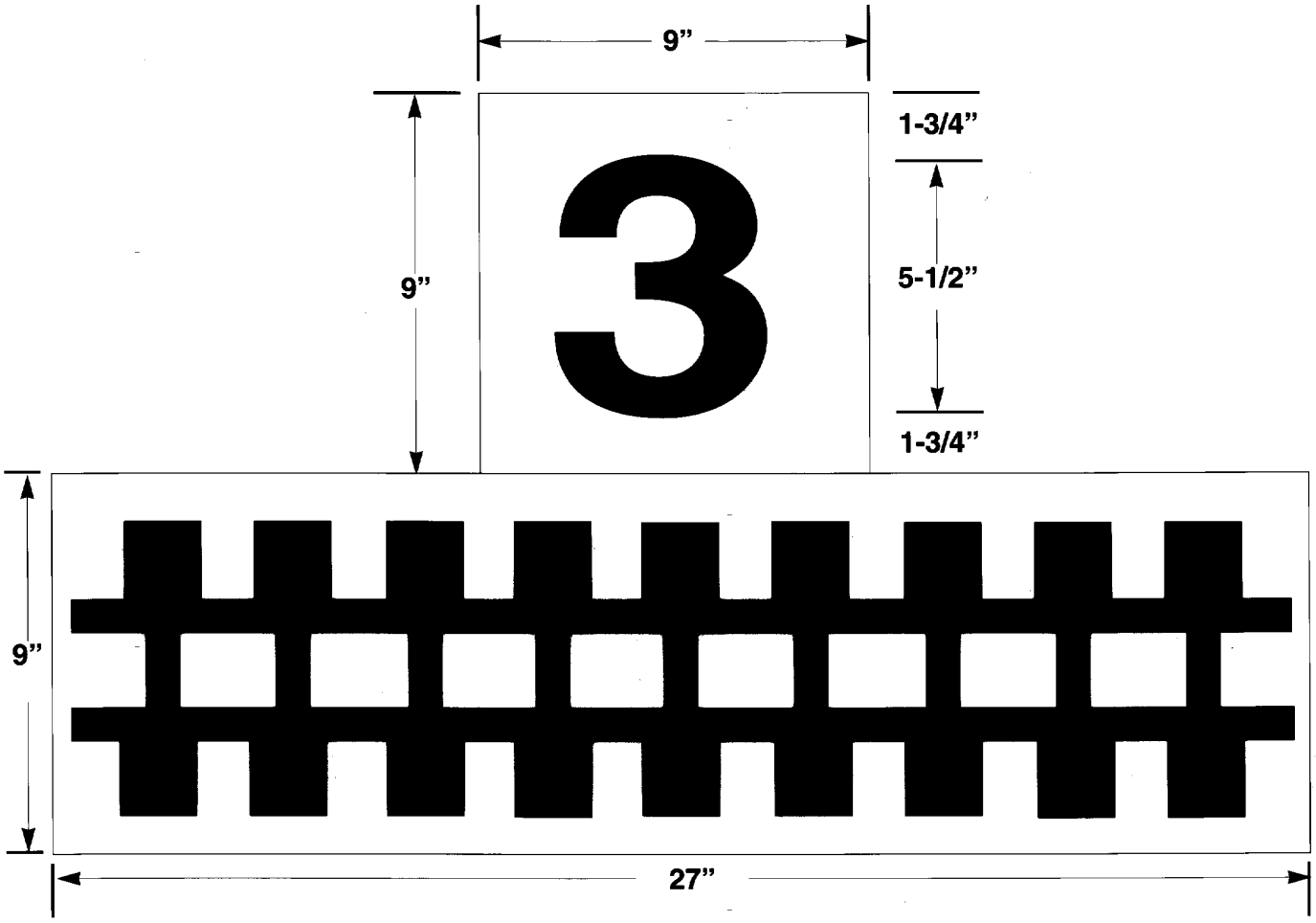


Figure 12

BILLING CODE 4910–22–C

(37) Request VIII–36(C)—Signs and Markings for No Lane Change Zones at Railroad Crossings

The FHWA received a request from a private citizen in Pompano Beach, Florida, to require markings at railroad-highway grade crossings to prohibit vehicle lane changing on the tracks when there are two or more lanes in one direction. It was also recommended that longitudinal markings be placed 75 feet before a crossing and 75 feet beyond a crossing. These markings would designate a ''safety zone'' where no lane changing would be permitted.

The FHWA does not support adopting this as a MUTCD requirement because it believes that the implementation of ''no passing zones'' should be determined at each specific crossing based on an engineering study of that crossing.

(38) Request VIII–37(C)—Fast Train Signs

This request, from the Federal Railroad Administration (FRA), is for the development of a warning sign and warrants for use on approaches to high speed rail crossings that may or may not be already equipped with automatic warning devices. This warning sign would be a yellow diamond or circle and contain a message such as: ''LOOK FOR HIGH SPEED TRAINS;'' or ''BEWARE FAST TRAINS.'' A supplemental plaque indicating the number of tracks is also proposed. This sign would only be used at crossings where high speed trains (80 to 110 mph) operate. The FHWA invites comments on the shape, message, and criteria for application of this proposed sign.

(39) Request VIII–38(C)—Supplementary Plaques on STOP and YIELD Signs Used at Railroad-Highway Grade Crossings

This second request from the FRA is to permit the use of a supplementary plaque with STOP or YIELD Signs at railroad-highway grade crossings. The supplementary plaque would have a red background and white lettering with messages such as: 2–TRACKS; or WATCH FOR SECOND TRAIN; etc. The FHWA invites comments on the appropriateness of the proposed supplementary plaques. The FHWA is concerned that a lengthy message will result in a supplemental sign which may detract from the regulatory message of STOP or YIELD.

(40) Request VIII–39(C)—Warrants for Warning Devices at Railroad-Highway Grade Crossings With High Speed Train Operations

This third request from the FRA is to include in Part VIII of the MUTCD recommended application criteria (warrants) for the use of warning devices, i.e., signs, active advance warning signs, flashers, gates, four-quadrant gates, gates with median barriers, constant warning time circuitry and/or means (loops) for vehicle detection at crossings hosting high speed trains (80 to 110 mph). The FHWA supports this proposal, as it is important that applications be standardized and uniform. Highway users should encounter similar warning systems for similar railroad-highway grade crossing situations throughout the country. The FHWA invites comments on the warrants which should be applied for warning devices at railroad-highway grade crossings where high speed train operations are present.

(41) Request VIII–40(C)—Placement of the Crossing Identification Number Tag

This fourth request from the FRA is to include in Part VIII of the MUTCD the standards for the design and placement of the U.S. DOT/AAR National Rail-Highway Crossing Inventory number plate. This proposal would specify the sign size, material used, and the location of the plate at the crossing. The FHWA supports this proposal for the uniformity of location and durability of this tag.

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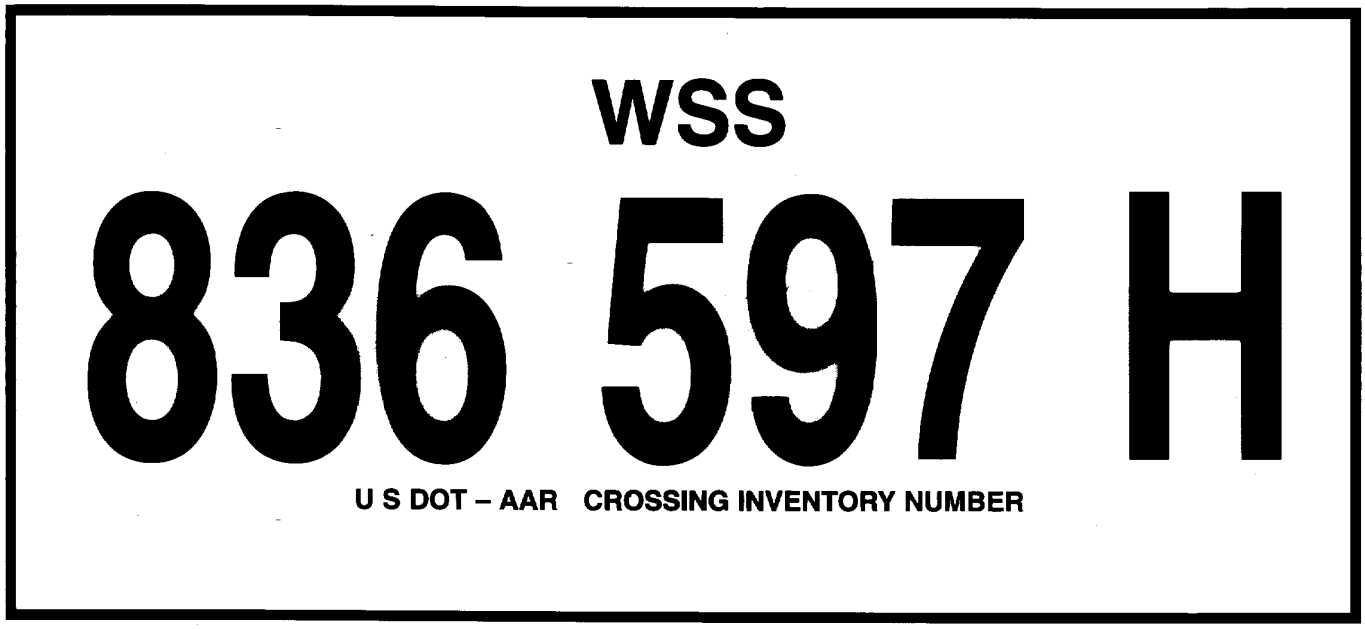

Figure 13

BILLING CODE 4910–22–C

(42) Request IX–6(I)—Marking Hazardous Bicycle Conditions

The FHWA received an inquiry from a consulting engineer in Salem, Oregon, concerning whether or not the discussion in MUTCD section 9C–6 and the accompanying figure 9–7 is intended for bicycle facilities only. The diagram and discussion apply to any roadway situation where a hazardous drain, grate, or any other roadway condition may be hazardous to the bicyclist. The FHWA intends to include this clarification in the next edition of the MUTCD.

Rulemaking Analyses and Notices; Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. Most of the changes proposed in this notice provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that application uniformity will improve at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities, including small governments. This notice of proposed rulemaking adds some alternative traffic control devices and only a very limited number of new or changed requirements. Most of the proposed changes are expanded guidance and clarification information. Based on this evaluation, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, which requires that changes to the national standards issued by the FHWA shall be adopted by the States or other Federal agencies within two years of issuance. These proposed amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. To the extent that these amendmends override any existing State requirements regarding traffic control devices, they do so in the interests of national uniformity.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32, 655.601, 655.602, and 655.603; 49 CFR 1.48)

Issued on: June 1, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–14310 Filed 6–9–95; 8:45 am]

BILLING CODE 4910–22–P

federal register

Monday
June 12, 1995

Part VII

Department of the Interior

Bureau of Indian Affairs

Plan for the Distribution of the Confederated Tribes of the Colville Reservation Indian Judgment Funds Before the United States Court of Federal Claims; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Distribution of the Confederated Tribes of the Colville Reservation Indian Judgment Funds in Docket No. 181–D Before the United States Court of Federal Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

EFFECTIVE DATE: This plan was effective as of April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Division of Tribal Government Services, MS 2611–MIB, 1849 C Street, N.W., Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: The Act of November 2, 1994, (Pub. L. 103–436, 108 Stat. 4577), requires that a plan be prepared and submitted to Congress for the distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Federal Claims to the Confederated Tribes of the Colville Reservation. Funds were appropriated pursuant to section 1304 of title 31, United States Code, in satisfaction of the Settlement Agreement entered into between the United States and the Tribe on April 16, 1994. The plan for the use of the funds was submitted to Congress with a letter dated January 17, 1995, and was received (as recorded in the Congressional Record) by the Senate on January 26, 1995, and by the House of Representatives on January 19, 1995. The plan became effective April 5, 1995, as provided by the Act, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan—For the Use of Judgment Funds Awarded to the Confederated Tribes of the Colville Reservation Docket 181–D Before the United States Court of Federal Claims

The funds appropriated in satisfaction of the award entered on behalf of the Confederated Tribes of the Colville Reservation in Docket 181–D before the United States Court of Federal Claims, (less attorney fees, litigation and related expenses, and including all interest and investment income accrued), shall be distributed to all enrolled tribal members, born on or prior to and living as of February 15, 1995.

Per Capita Aspect: The Confederated Tribes of the Colville Reservation shall make a per capita distribution of one hundred percent (100%) of the principal, interest, and investment income accrued, in a sum as equal as possible, to each member of the Confederated Tribes of the Colville Reservation, born on or prior to and living on February 15, 1995, whose names appear on the tribal roll, as approved by the Secretary. Any remaining amount, after the per capita payment to the eligible members, shall revert to the tribe for use in tribal administration programs.

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR part 4, subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512. Minors' shares will be held in trust until the minor reaches 18 or his/her high school class graduates from high school, whichever is the latter.

Dated: May 23, 1995.

Ada E. Deer,

Assistant Secretary-Indian Affairs.

[FR Doc. 95–14359 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Monday
June 12, 1995

Part VIII

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Pueblo of San Ildefonso of New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal/State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal/State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Compact Between The Pueblo of San Ildefonso of New Mexico and the State of New Mexico, which was executed on April 17, 1995.

DATES: This action is effective June 12, 1995.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4070.

Dated: June 2, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–14355 Filed 6–9–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Monday
June 12, 1995

Part IX

Department of the Interior

Bureau of Indian Affairs

Mission Indian Judgment Funds; Plan for Use; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use of the Mission Indian Judgment Funds in Docket No. 80 A–2 Before the United States Court of Federal Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

EFFECTIVE DATE: This plan was effective as of March 9, 1995.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Division of Tribal Government Services, MS 2611–MIB, 1849 C Street, N.W., Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973, (Pub.L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on October 26, 1993, in satisfaction of the award granted to the Mission Indians before the United States Court of Federal Claims in Docket 80 A–2. The plan for the use of the funds was submitted to Congress with a letter dated October 20, 1994, and was received (as recorded in the Congressional Record) by the Senate on December 1, 1994, and by the House of Representatives on December 1, 1994. The plan became effective March 9, 1995, as provided by the 1973 Act, as amended by Pub.L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

PLAN—for the Use and Distribution of the Cuyapaipe Band of Mission Indians, et al. in Docket 80–A–2 before the United States Court of Federal Claims

The funds appropriated October 26, 1993, in satisfaction of the award granted in Docket 80–A–2, granted to the Cuyapaipe Band of Mission Indians, et al. before the United States Court of Federal Claims, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows.

The Secretary of the Interior (Secretary) shall divide the funds between the six respective Mission Bands of Indians of California, according to the settlement and judgment in Docket 80–2–A. The division of the funds is as follows: Cuyapaipe, $257,995; Santa Rosa, $517,880; Morongo Band, $6,066,375; Pechanga Band, $439,420; La Posta $118,330; and San Luis Rey $100,000. Interest and investment income accrued shall be proportionately divided in accordance with the appropriate investments made prior to the effective date of the plan.

Cuyapaipe Band

The Cuyapaipe Band of Mission Indians share of the award in Docket 80–A–2 shall be distributed and used as follows.

Per Capita Aspect

The Secretary shall make per capita distributions in sums as equal as possible of thirty percent (30%) of the Band's share. The membership roll of the Cuyapaipe Band shall be brought current, pursuant to the Band's Constitution and By-Laws, to include all band members born on or prior to and living on the effective date of this Plan. The per capita distributions shall be made in accordance with the wishes of the General Council. Any remaining amount after the per capita payments have been distributed to the members shall revert to the tribe for use in the programming aspect of this plan.

Programming Aspect

Seventy percent (70%) of the funds allocated to the Cuyapaipe Band shall be invested by the Cuyapaipe General Council in a permanent investment program. Until such time as the Cuyapaipe Council presents an investment plan to the Secretary for approval, the Secretary shall continue to invest the funds of this aspect. Should the Council undertake to invest the funds in the future it shall present an investment plan to the Secretary for approval.

The investment plan will contain or be subject to the requirements of sound investments, responsible accounting and adequate controls to obtain maximum benefit for the Cuyapaipe Band of Mission Indians.

Upon the Secretary's approval of the investment plan, the invested funds will be transferred to the Cuyapaipe Band at a mutually agreed upon time. All responsibility of the United States for the judgment funds or the investment or use of the funds so transferred shall cease at the time the funds are transferred.

La Posta Band

The La Posta Band of Mission Indians share of the award in Docket 80–A–2 shall be distributed and used as follows.

Programming Aspect

Seventy percent (70%) of the funds allocated to the La Posta Band, including principal, interest and investment income accrued shall be invested by the Secretary, to be used by the tribal governing body on a budgetary basis on programs which may include, but are not limited to: tribal administrative costs, economic development, tribal educational and burial fund priorities.

Tribal Investment and Dividend Aspect

Thirty percent (30%) of the funds allocated to the La Posta Band shall be transferred to the Band to be invested by the Band in an investment program. Until such time as the La Posta Band presents an investment plan to the Secretary for approval, the Secretary shall continue to invest the funds of this aspect.

The investment plan will contain or be subject to the requirements of sound investments, responsible accounting and adequate controls to obtain maximum benefit for the La Posta Band.

Upon the Secretary's approval of the investment plan, the invested funds will be transferred to the La Posta Band at a mutually agreed upon time. All responsibility of the United States for the judgment funds or the investment or use of the funds so transferred shall cease at the time the funds are transferred.

The principal of the investment plan will remain continually invested until such time as the governing body of the La Posta Band authorizes the use of the principal for tribal programs. The interest on the principal shall be distributed by the Band in the form of dividend payments to all eligible tribal members born on or prior to and living on the dates such dividend payments are declared by the tribal governing body.

Morongo Band

Per Capita Aspect

The Secretary of the Interior (Secretary) shall make a per capita distribution of eighty percent (80%) of the Band's share of the principal, interest, and investment income accrued, in sums as equal as possible, pursuant to the custom and tradition practices of the Band. The membership roll of the Morongo Band shall be brought current, pursuant to Amended Ordinance No. 3 of the Morongo Band. Such per capita payments shall include all eligible Band members born on or prior to and living on the effective date of this Plan.

Any remaining amount after the per capita payments to the members shall revert to the band for use in the programming aspect of this plan.

Programming

Twenty percent (20%) of the Band's share shall be invested by the Secretary and utilized by the governing body on a budgetary basis for purposes which may include, but not be limited to, water system expansion, water system repairs, water system services and aquifer recharge.

Pechanga Band

The Pechanga Band of Mission Indians share of the award in Docket 80–A–2 shall be used in the following manner.

The Band's share will be invested by the Secretary for tribal program and investment purposes, until such time as the General Council determines the use of the funds, through the normal administrative process. The Band's share will be used for activities which may include, but not be limited to: land acquisition, fire department, cemetery burial fund, recreation and youth programs, Pechanga Creek embankment improvements, a convalescent home for the elderly, tribal administration and operations.

If at any future date the Pechanga Band presents an investment plan to the Secretary for approval, the Secretary shall determine that the investment plan contains and is subject to the requirements of sound investments, responsible accounting and adequate controls, to obtain maximum benefit for the Pechanga Band. Upon the Secretary's approval of the investment plan, the invested funds will be transferred to the Pechanga Band, at a mutually agreed upon time. All responsibility of the United States for the judgment funds or the investment or use of the funds so transferred shall cease at the time the funds are transferred.

No part of these funds shall be used for a per capita payment distribution.

Santa Rosa

The Santa Rosa Band of Mission Indians share of the award in Docket 80–A–2 shall be used in the following manner.

Investment Aspect

Twenty percent (20%) of the Band's share shall be invested by the Secretary in a permanent investment program. The funds invested under this aspect shall be subject to review periodically by the governing body of the Santa Rosa Band to determine whether continued investment is in the best interest of the tribe. The governing body shall submit a proposal to the Secretary for use of the investment, interest and investment income accrued.

Programming

Eighty percent (80%) of the Band's share of the funds, shall be invested by the Secretary, to be used by the tribal governing body on a budgetary basis for programming purposes, which may include, but are not limited to: land acquisition, sewage facilities, fire department needs, an alcoholism treatment fund, a youth day care center, the tribal cemetery, and tribal recreation facilities.

San Luis Rey

The share of the award in Docket 80–A–2 made to the San Luis Rey Band of Mission Indians shall be invested by the Secretary, until such time as a specific plan for the use of the funds is approved by Congress.

General Provisions

The per capita shares of living competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, part 4, subpart D. Per capita shares of legal incompetents and minors shall be handled pursuant to 25 CFR 115.4 and 115.5, as appropriate, as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512.

None of the funds made available under this plan for programming or per capita distribution shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources, nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for any per capita shares in excess of $2,000, any Federal or federally assisted programs.

Dated: May 23, 1995.

Ada E. Deer,

Assistant Secretary - Indian Affairs.

[FR Doc. 95–14360 Filed 6–9–95; 8:45 am]

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Monday, June 12, 1995

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

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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