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# federal register

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**Separate Parts In This Issue**

**Reader Aids**

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

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## CFR PARTS AFFECTED IN THIS ISSUE

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

# Rules and Regulations

Federal Register
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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 400

**RIN 0563–AB01**

### General Administrative Regulations; Ineligibility for Programs Under the Federal Crop Insurance Act

**AGENCY:** Federal Crop Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) to prescribe the procedures for determining eligibility for program participation in any program administered under the Federal Crop Insurance Act, as amended, and administering and maintaining an ineligible tracking system. In addition, this rule sets out the criteria for reinstatement of program eligibility.

**EFFECTIVE DATE:** September 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Bill Smith, Supervisory Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7743.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866, and, therefore, has been reviewed by the Office of Management and Budget (OMB).

#### Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that the expected benefits of this action outweigh the cost to society. By allowing the efficient tracking of ineligible individuals, the Federal government will be able to collect about $6 million annually in debts owed by crop insurance policyholders. No additional burden on policyholders will result through implementation of the tracking system. Information previously provided by policyholders and required to obtain benefits under the Federal crop insurance program will be used to establish and administer the tracking system. The tracking system will cause an additional burden for crop insurance companies for reporting and retrieving information to and from the tracking system, creating new data processing requirements. This burden is estimated to be $250,000 for the first year and $50,000 annually thereafter. Federal costs for developing and maintaining the data processing systems and administrative processes for the tracking system are estimated to be $20,000 for the first year and $10,000 annually for future years.

#### Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments on information collection requirements under OMB number 0563–0047, through November 30, 1999. No public comments were received.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandate (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

#### Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. The amount of work required of insurance companies should not increase because the information used to determine eligibility is already maintained at their office. The amount of work required of insurance companies may actually be reduced because verification with FCIC of a producer's compliance with the controlled substance regulations, currently done manually, will be automated. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

#### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### Executive Order 12988

The final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before action for judicial review may be brought.

#### Environmental Evaluation

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Background

On Thursday, October 31, 1996, FCIC published a proposed rule in the **Federal Register** at 61 FR 56151–56155

to issue General Administrative Regulations (7 CFR part 400, subpart U) effective for the 1998 crop year (1999 for Texas and Arizona/California Production Citrus) and succeeding crop years. Following publication of that proposed rule, the public was afforded 60 days to submit written comments, data, and opinions. A total of 62 comments were received from the crop insurance industry, Farm Service Agency, and FCIC. The comments received, and FCIC responses, are as follows:

*Comment:* Two comments received from the crop insurance industry questioned where provisions are to be found for the administration of the Ineligible Tracking System.

*Response:* Provisions for the administration of the Ineligible Tracking System will be contained in FCIC procedures and will be issued when the Ineligible Tracking System is activated.

*Comment:* One comment received from the crop insurance industry asked if the Ineligible Tracking System would be part of the existing Policyholder Tracking System or a separate tracking system.

*Response:* The Ineligible Tracking System's purpose requires it to be separate from the Policyholder Tracking System. The Policyholder Tracking System is basically used for informational inquiries to FCIC's data systems containing insurance experience and related information for individual insureds. The Ineligible Tracking System's primary purpose is the validation of a person's eligibility to receive insurance program benefits based on records submitted by insurance providers and to accept or reject the person for insurance purposes based on that eligibility determination.

*Comment:* One comment received from the crop insurance industry suggested the reference to ''makes a significant contribution'' contained in the definition of actively engaged in farming, was too broad and subjective, difficult to prove, and would work to disadvantage of insurance provider and program.

*Response:* FCIC agrees and will change the definition from ''a significant contribution'' to ''a contribution,'' to avoid subjective determinations associated with ''significant.''

*Comment:* One comment received from the crop insurance industry questioned if the definition of authorized person should include past as well as current individuals associated with FCIC or an insurance provider, since a former relationship would no longer require access to the Ineligible Tracking System.

*Response:* An individual could be involved in judicial or administrative proceedings after they have left the employment of FCIC or the insurance provider and require access to protected information. For this reason, the definition must provide access for both current and past contractors, employees, or other types of individual or business associations. Therefore, no change will be made.

*Comment:* One comment received from the crop insurance industry questioned if under the definition of controlled substances, drug related convictions not related to ''planting and harvesting'' prohibited drug producing plants would be a cause for ineligibility.

*Response:* The violation of controlled substance provisions under this subpart is limited to the planting, harvesting, and storing of prohibited drug producing plants. Violations related to the sale or distribution of an illegal drug, for example, would not be covered under this definition unless the person was also convicted of growing the plants from which the drug was processed.

*Comment:* Two comments received from FCIC stated that the spelling of the species names for marijuana and opium poppies is incorrect.

*Response:* FCIC agrees and will correct the spelling.

*Comment:* Two comments received from the crop insurance industry concerning the definition of debt questioned if an ''appropriate agency official'' would only apply to FCIC and if so the rule should specify position/title. Would the determination be made without regard to the appeal process, the judicial system, NAD, or the Board of Contract Appeals process.

*Response:* The appropriate agency official will be an employee of the Risk Management Agency. However, FCIC believes that designating the responsible official in this subpart unnecessarily restricts administrative decisions of the agency. FCIC will clarify the definition of debt by stating any determination of debt by an agency official will be based on evidence provided by the insurance provider. Any determination will be subject to review, reconsideration, appeal, judicial process, or other actions in accordance with applicable regulations governing such matters.

*Comment:* Three comments received from the Farm Service Agency and crop insurance industry recommended that administrative fees under the catastrophic risk protection (CAT) program be specifically excluded under the definition of debt and that the reference to ''ACT'' be changed to ''Act''.

*Response:* FCIC agrees and will amend the definition accordingly.

*Comment:* One comment received from the crop insurance industry questioned if the insured is responsible for repayment of an overpaid indemnity and does the reason for an overpayment affect the insured's responsibility to make repayment.

*Response:* An overpayment is included under the definition of debt. If a determination of debt is made, the insured is responsible for repayment, whether the overpayment arose from an indemnity or replant payment and irrespective of the cause of the overpayment.

*Comment:* One comment received requested FCIC describe the time frame in which it must determine that a debt is delinquent.

*Response:* The crop insurance policy and 7 CFR part 400, subpart K provides the procedure and time frames for determining when a debt is delinquent.

*Comment:* One comment received from the crop insurance industry suggested that if scheduled installment payment agreement is entered into after termination date, insurance coverage is automatically reinstated even though the policy had been terminated because, ''The debt is not considered delinquent.'' (For example, the debt is not paid for 1996 crop year and the policy is terminated for the 1997 crop year; a payment agreement is set up after the termination date; insurance coverage is reinstated for the 1997 crop year).

*Response:* Once the policy has been terminated for failure to pay a debt, the policy remains terminated for the entire crop year, regardless of whether the producer subsequently pays the debt or enters into an installment payment plan. Reinstatement of eligibility simply means that the producer may apply for, and receive, insurance for the next crop year. It does not mean reinstatement of the policy. The corporation cannot be placed in the position of having to reinstate a policy after a loss has occurred.

*Comment:* One comment received from the crop insurance industry stated that the definition of delinquent debt did not adequately address bankruptcy and establish that a premium unpaid on the termination date is a prefiling debt under the Chapter 12 umbrella and is not a delinquent debt. Unless clarified, there would be uncertainty about the eligibility status for insurance coverage for persons under these circumstances and after discharge of applicable debts under bankruptcy proceedings.

*Response:* The definition of delinquent debt states that such debt

does not include debts discharged in bankruptcy and other debts which are legally barred from collection. If a premium unpaid on the termination date is considered a debt meeting either condition, it cannot be considered in making a determination of ineligibility. It is also clear, that any debt discharged in bankruptcy proceedings is not a delinquent debt and will not limit a p erson's eligibility under this subpart. Therefore, no change will be made.

*Comment:* One comment received from the crop insurance industry recommended the definition of insurance provider be changed by replacing ''private insurance company approved by FCIC'' with ''reinsured company approved by FCIC.''

*Response:* FCIC has amended the definition to specify ''A reinsured company.''

*Comment:* One comment received from the crop insurance industry questioned if, under the definitions of scheduled installment payment agreement and settlement, FCIC would enter into an agreement or settlement with a person with a crop insurance policy with a reinsured company.

*Response:* FCIC will only enter installment payment agreements with persons with policies directly insured by FCIC. Where the insurance provider is a reinsured company, the agreements will be between the reinsured company and its insureds.

*Comment:* One comment received from the crop insurance industry recommended the definition of substantial beneficial interest be changed by replacing ''Any person having'' with ''An interest of at least ten percent.'' As currently written, the interest is defined as person instead of an amount of interest.

*Response:* FCIC agrees and will clarify the definition.

*Comment:* One comment received from the crop insurance industry recommended specific language be added to § 400.678 that would make the Ineligible Tracking System apply to any program developed privately and reinsured by FCIC.

*Response:* FCIC agrees and will revise § 400.678 to add paragraph (c) which will clearly state that privately developed products reinsured by FCIC are subject to this subpart.

*Comment:* One comment received from the crop insurance industry recommended eliminating the second sentence that is contained in paragraphs (a), (b), and (c) of § 400.679 or consolidating it with the opening sentence of the section. Also, the respondent suggested that the sentence, ''Delinquent debts are limited to those that arise from crop insurance programs administered by FCIC under the Act'' contained in paragraph (a) be moved and combined with the definition of delinquent debt.

*Response:* FCIC does not believe the suggested changes in § 400.679 (a), (b), and (c) improve the structure or clarity of the subpart. Therefore, no changes will be made. FCIC agrees that the requirement that delinquent debts arise under the Act be included in the definition of ''delinquent debt'' and has amended the provision accordingly.

*Comment:* One comment received from the crop insurance industry suggested that ''A person * * *'' contained in the opening sentence of the section be changed to ''Any person * * *''; references to ''* * * all programs * * *'' be changed to ''* * * any program * * *''; and the plural case for '' their'' in the next to the last sentence of paragraph (c) be corrected.

*Response:* FCIC agrees and will amend the section accordingly.

*Comment:* One comment received from the crop insurance industry questioned if a person indebted to FCIC or an approved insurance provider disputes the debt and can ''demonstrate that the amount of debt is in dispute, the person's application will be accepted or their insurance will remain in effect but no indemnity will be made until the dispute is resolved.'' Will there be similar language in the proposed rule if the debt delinquency is disputed by the producer or insured.

*Response:* The provision stated above is contained in 7 CFR part 400, subpart R. FCIC has amended § 400.679 paragraph (a) to reference subpart R to ensure consistency between the subparts.

*Comment:* One comment received from the Farm Service Agency stated that 7 CFR part 796 referenced in § 400.679(b) has been replaced by 7 CFR part 718.

*Response:* FCIC agrees and will amend the section accordingly.

*Comment:* One comment received from the crop insurance industry suggested that § 400.680 entitled ''Determinations of ineligibility'' should be changed to Notification of ineligibility.

*Response:* FCIC will change the section's title to ''Determination and notification of ineligibility.''

*Comment:* One comment received from the crop insurance industry questioned if this subpart would apply to all delinquent debts and violations or only those which occur after the effective date of this subpart.

*Response:* This subpart applies to all delinquent debts and violations that occur after the effective date of this subpart. If this subpart is made effective in the middle of a crop year for a crop, those persons with delinquent debts or violations will be ineligible effective for the next crop year. For persons affected by a delinquent debt or violation that arose prior to the effective date of this subpart, the insurance provider must follow all procedures outlined in this subpart before such persons may be placed on the ineligible list.

*Comment:* Three comments received from the crop insurance industry asked that the term ''evidence'' be defined and the title or office to which ineligibility evidence is submitted be listed in § 400.680.

*Response:* FCIC will develop and issue procedures which describe the evidence requirements and provides other information and instructions necessary to administer this subpart.

*Comment:* One comment received from the crop insurance industry asked does the failure to make installment payments in accordance with a scheduled installment payment agreement have the potential of causing the individual to become ineligible.

*Response:* The failure to pay installments under an approved payment agreement will result in a determination of ineligibility for the person in accordance with the terms of the agreement. The insurance provider must notify FCIC of the person's payment default in order for this determination to be made.

*Comment:* Two comments received from the crop insurance industry suggested that this section does not make it clear that FCIC is solely responsible for placing the policyholders name on the Ineligible Tracking System because of a delinquent debt and that the reinsured company should be protected from state law in such determinations.

*Response:* FCIC is not solely responsible. It is the insurance provider's responsibility to ensure that the policyholder meets the criteria for placement on the Ineligible Tracking System and provide sufficient information to support its determination. FCIC's responsibility is to verify the information submitted supports that the criteria have been met and issue a Notice of Ineligibility. FCIC is only responsible for the determinations involving persons insured through local Farm Service Agency offices.

*Comment:* One comment received from the Farm Service Agency questioned whether the Notice of Ineligibility will specify the crop year

(or reinsurance year) for which the person is determined ineligible.

*Response:* The notice will specify the crop year ineligibility will become effective and the terms, if applicable.

*Comment:* Two comments received from FCIC and the crop insurance industry concerned whether an insurance provider will receive a copy of the Notice of Ineligibility, inquired if the debtor appealed the ineligibility determination would the company be notified, and recommended that copies of all notices be provided to the insurance provider.

*Response:* When the insurance provider submits evidence of ineligibility and upon verification of the evidence, FCIC will send the Notice of Ineligibility to the policyholder and the insurance provider. Section 400.680 will be amended to include the insurance provider for notification purposes. With respect to notices of appeal, producers will only be able to challenge the placement on the ineligibility list under this subpart. If the reason for placement on the list is debt to a reinsured company, the company will be notified of the appeal hearing and may be given the opportunity to participate if permitted by 7 CFR part 11.

*Comment:* One comment received from the crop insurance industry questioned how a determination of ineligibility would be affected if the person does not receive a Notice of Ineligibility and whether any responsibility for such failure would be borne by the insurance provider.

*Response:* FCIC will implement a notification process employing reasonable steps to assure notification of affected persons, including documentation of those efforts. However, receipt of the notice by the person cannot be guaranteed and is not required in order to enforce a determination of ineligibility. Insurance providers are not responsible or accountable for successfully notifying persons under this subpart unless they did not provide accurate name and address information to FCIC which was available to them.

*Comment:* One comment received from the crop insurance industry suggested that § 400.680 incorrectly states that reconsideration of a determination of ineligibility will be made to the reinsured company. It also suggests that the 30-day period to request a reconsideration or file an appeal was inconsistent with time allowed under the regulation for disputed determinations.

*Response:* FCIC agrees that any appeal of a determination of ineligibility should not be made to the reinsured company. Only appeals related to whether the person is correctly identified as ineligible will be accepted. Any challenge to the existence or amount of the debt must be appealed under the terms of the policy or 7 CFR part 400, subpart K.

*Comment:* One comment received from the crop insurance industry recommended the term ''provider of insurance'' used to identify the party to which reconsiderations are submitted be changed to ''insurance provider.''

*Response:* FCIC will correct this section to state that appeals will be submitted to the National Appeals Division.

*Comment:* One comment received from the crop insurance industry stated that conflicts exist between the reconsideration and appeals provisions under this subpart and applicable provisions contained in 7 CFR part 400, subpart J and part 780. Also determinations made by reinsured companies are erroneously subject to reconsideration and appeal provisions of this subpart.

*Response:* This subpart specifies that all appeals are governed by 7 CFR part 11. Therefore, the requirements of subpart J and part 780 are not applicable. Therefore, no conflict exists.

*Comment:* One comment received from the crop insurance industry suggested that the National Appeals Division (NAD) notify the reinsured company of appeal proceedings so that it could participate and asked what the effect to the company will be if the debt is overturned.

*Response:* Only the listing on the ineligible list is appealable to NAD under this subpart, not the underlying debt. However, the company will be given notice of the appeal and may be given an opportunity to participate if permitted by 7 CFR part 11.

*Comment:* One comment received from the Farm Service Agency asked how individuals insured under provisions contained in the CAT endorsement for tobacco and undivided interest landowners would be affected under this subpart if the named insured for such policies did not pay the premium.

*Response:* There is no premium for CAT. If the administrative fee is not paid by the acreage reporting date, the policy terminates for the crop year for which the fee is not paid. Eligibility for the following year is not affected.

*Comment:* Two comments received from the crop insurance industry stated that removing the ineligible person from a policy and reducing the policyholder share as provided in § 400.681(a) (3) and (4) will result in entities creating false share arrangements. A recommendation to determine the corporation or other business entity ineligible based on the ineligibility of one of the individual members was made.

*Response:* Removing an ineligible person from the policy will not create false share arrangements. The share of the ineligible person is simply not insurable and all other shares remain the same. Therefore, no changes will be made.

*Comment:* One comment received from the crop insurance industry asked when must the declared overpayment referenced in § 400.681(a)(5) be paid.

*Response:* The crop insurance policy states that an overpayment is considered a delinquent debt if not paid within 30 days of the date a notice is issued to the insured. Once the debt is determined delinquent, all provisions of the policy related to its repayment apply.

*Comment:* Two comments received from the crop insurance industry suggested that § 400.681(a)(6) provides that a portion of the premium should be retained to cover administrative costs rather than refund the entire premium.

*Response:* FCIC agrees that retention of a portion of the producer paid premium by the insurance provider to cover administrative costs is consistent with 7 CFR 400.47 and will amend the provision accordingly.

*Comment:* One comment received from the crop insurance industry expressed concern under § 400.681(b)(1) that the spouse had to have a separate farming operation prior to marriage to maintain it separately for purposes of ineligibility was contrary to existing FCIC procedure and would be impractical to verify.

*Response:* FCIC agrees that it is not necessary that the spouse have had a separate farming operation prior to marriage since there are many instances where the spouses legitimately maintain separate farming operations. Insurance providers will still be required to verify that the farming operations are legitimately separate. The provision is also created to clarify that transfer of a farming operation from one spouse to another is not considered a separate farming operation

*Comment:* One comment received from the crop insurance industry recommended section 400.681(c), which describes a minor, be added to § 400.677 Definitions.

*Response:* FCIC agrees and will amend the provision accordingly. Further, FCIC will revise the definition to allow persons who are under 18 years of age but have been emancipated by the courts, not to be considered a minor.

*Comment:* One comment received from the crop insurance industry recommended that § 400.681 (d) and (e) be combined and the word ''devise'' in paragraph (e)(2) be changed to ''device.''

*Response:* FCIC agrees and will amend the section accordingly.

*Comment:* One comment received from the crop insurance industry questioned the distinction between ''adopting a material scheme or device'' and ''fraud or misrepresentation'' contained in § 400.681(e)(2) and (3), and does the insurance provider decide the period of time for disqualification.

*Response:* FCIC has removed the references to scheme and device from this subpart since the penalty for such device is ineligibility to receive benefits only for the crop year in which the abuse occurred. It does not affect future eligibility. These provisions will now be treated under disqualifications under section 506(n) of the Act which encompasses fraud, misrepresentation, and scheme and device. FCIC will determine the length of disqualifications through the administrative process.

*Comment:* One comment received from the crop insurance industry objected to the different periods of ineligibility between a CAT policyholder and a policyholder with limited or additional coverage provided under section 400.681 (e) (3).

*Response:* The periods of ineligibility are specified in Act and 7 CFR part 400, subpart R. Therefore, no change will be made.

*Comment:* One comment received from the crop insurance industry stated the ''scheduled installment payment agreements'' between private insurance provider and policyholder as referenced in the definition of ''delinquent debt'' are presently not reported to FCIC and asked whether payment agreements need to be reported to FCIC.

*Response:* If a person is listed in the Ineligible Tracking System due to a delinquent debt, notification will be required if the person enters into a payment agreement in order for the person's name to be removed from the system and eligibility for insurance coverage reinstated. If the person fails to perform under the agreement, the reinsured company will have to notify FCIC in order for ineligibility to be reinstated. No notification to FCIC is required if the payment agreement is approved by the company by the termination date.

*Comment:* One comment received from the crop insurance industry pointed out under § 400.682 that the second sentence of paragraph (a) refers to ''reinstated'' while the second sentence of paragraph (c) refers to ''restored'' and that the first sentence of each paragraph could be shortened. Also, the use of the words ''may have'' in the opening sentence of this section and paragraph (c) versus ''will be'' in paragraphs (a) and (b) as related to reinstating eligibility was questioned.

*Response:* FCIC will change ''restored'' to ''reinstated'' and ''will be'' to ''may be.'' The latter change will eliminate any possible conflict in reinstating eligibility for the person if more than one criteria for ineligibility applies.

*Comment:* One comment received from the crop insurance industry stated the timing of reinstatement of insurance coverage is a critical issue and suggested procedures be developed to allow a person to obtain immediate coverage even after the applicable sales closing date.

*Response:* Section 400.682 (d) states that if eligibility is reinstated after the applicable sales closing date for the crop year, insurance coverage can not be obtained until the following crop year. The purpose of this provision is to encourage insureds to pay their debt and prevent the payment of a debt only when the insured suspects a loss is likely. Policies will only be reinstated effective at the beginning of the crop year if the producer prevails on appeal. Therefore, no change will be made.

*Comment:* Two comments received from the crop insurance industry stated that § 400.682 (d) and (e) could be combined, perhaps in reverse order.

*Response:* FCIC agrees and will combine paragraph (e) with paragraph (d).

*Comment:* One comment received from the crop insurance industry concerned whether all substantial beneficial interest information currently collected by insurance providers will have to be transmitted to FCIC in establishing the Ineligible Tracking System.

*Response:* The insurance providers will submit all substantial beneficial interest information to FCIC to establish a tracking system capable of properly identifying persons who are ineligible to participate in the crop insurance program.

*Comment:* One comment received from the crop insurance industry questioned if FCIC is going to track the dates of conviction for controlled substance provision and fraud and misrepresentation violations and for purposes of determining future eligibility.

*Response:* The date of conviction and future date of eligibility will be entered into the Ineligible Tracking System and when the period of ineligibility has expired, the person's name will be removed from the system's active ineligibility records.

*Comment:* One comment received from the Farm Service Agency stated that, ''In case of controlled substance violations, FSA would notify FCIC of our determination and FCIC would notify FSA of determinations by reinsured companies, if applicable.''

*Response:* FCIC agrees and will develop procedures to facilitate the interagency notification of controlled substance violators.

*Comment:* Two comments received from the crop insurance industry recommended that references to ''private companies'' contained in § 400.683(a) (2) and (3) be replaced with ''insurance provider.''

*Response:* Since the Farm Service Agency is encompassed by ''Federal agencies,'' FCIC will amend paragraphs (a) (2) and (3) to use the term ''reinsured company.

*Comment:* One comment received from the crop insurance industry questioned whether the information contained in the Ineligible Tracking System would be available to others outside of the crop insurance program.

*Response:* Section 400.683 (a) (2) states that information contained in the system may be furnished to users, both for purposes of administering programs under the Act and for other purposes determined appropriate or required by law or regulation. The release, use, and protection of such information will be in accordance with these and other appropriate laws and regulations.

*Comment:* One comment received from the crop insurance industry concerned what is considered ''supporting documentation'' that will be maintained by FCIC for affected persons under § 400.683 (a) (3).

*Response:* Paragraph (a) (3) provides that supporting documentation regarding a determination of ineligibility may be maintained by FCIC, FSA, reinsured companies, or others. Such information will be described in procedures developed by FCIC and issued to insurance providers and will indicate the parties responsible for maintaining such documentation.

In addition to the changes described above, FCIC has made the following changes to this subpart:

1. Changed the effective year for this subpart to 1998 crop year (1999 for Texas and Arizona and California Production Citrus).

2. Section 400.677. Add a definition of ''CAT'' and ''minor'' for clarification. Amend definition of ''insurance provider'' to refer to a ''reinsured company'' instead of a ''private

insurance company reinsured by FCIC'' to avoid the redundancy with the definition of ''reinsured company.''

3. Revise § 400.681 to add a new subsection (a) to clarify when the period of ineligibility commences and combine it with subsection (d) to clarify the term of ineligibility. Redesignate the other subsections accordingly.

**List of Subjects in 7 CFR Part 400**

Administrative practice and procedure, Claims, Crop insurance; Fraud, Reporting and recordkeeping requirements.

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation adds a new subpart U to 7 CFR part 400, to read as follows:

## PART 400—GENERAL ADMINISTRATIVE REGULATIONS

## Subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act

Sec.



**Authority:** 7 U.S.C. 1506(1), 1506(p).

### § 400.675 Purpose.

This rule prescribes conditions under which a person may be determined to be ineligible to participate in any program administered by FCIC under the Federal Crop Insurance Act, as amended. This rule also establishes the criteria for reinstatement of eligibility.

### § 400.676 OMB control numbers.

The collecting of information requirements in this subpart has been approved by the Office of Management and Budget and assigned OMB control number 0563–0047.

### § 400.677 Definitions.

*Act.* The Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*).

*Actively engaged in farming.* Means a person who, in return for a share of profits and losses, makes a contribution to the production of an insurable crop in the form of capital, equipment, land, personal labor, or personal management.

*Applicant.* A person who has submitted an application for crop insurance coverage under the Act.

*Authorized person.* Any current or past officer, employee, elected official, general agent, agent, contractor, or loss adjuster of FCIC, the insurance provider, or any other government agency whose duties require access to the Ineligible Tracking System to administer the Act.

*CAT.* The catastrophic risk protection plan of insurance.

*Controlled substance.* Any prohibited drug-producing plants including, but not limited to, cacti of the genus (lophophora), coca bushes (erythroxylum coca), marijuana (cannabis sativa), opium poppies (papaver somniferum), and other drug-producing plants, the planting and harvesting of which is prohibited by Federal or state law.

*Debt.* An amount of money which has been determined by an appropriate agency official to be owed, by any person, to FCIC or an insurance provider under any program administered under the Act based on evidence submitted by the insurance provider. The debt may have arisen from an overpayment, premium non-payment, interest, penalties, or other causes but does not include non-payment of CAT coverage administrative fees.

*Debtor.* A person who owes a debt and that debt is delinquent.

*Delinquent debt.* Any debt owed to FCIC or the insurance provider, that arises under any program administered under the authority of the Act, that has not been paid by the termination date specified in the applicable contract of insurance, or other due date for payment contained in any other agreement or notification of indebtedness, or any overdue debt owed to FCIC or the insurance provider which is the subject of a scheduled installment payment agreement which the debtor has failed to satisfy under the terms of such agreement. Such debt may include any accrued interest, penalty, and administrative charges for which demand for repayment has been made, or unpaid premium including any accrued interest, penalty and administrative charges (7 CFR 400.116). A delinquent debt does not include debts discharged in bankruptcy and other debts which are legally barred from collection.

*EIN.* An Employer Identification Number as required under section 6109 of the Internal Revenue Code of 1986.

*FCIC.* The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

*FSA.* The Farm Service Agency or a successor agency.

*Ineligible person.* A person who is denied participation in any program administered by FCIC under the Act.

*Insurance provider.* A reinsured company or FSA providing crop insurance coverage to producers participating in any Federal crop insurance program administered under the Act.

*Minor.* Any person under 18 years of age. Court proceedings conferring majority on an individual under 18 years of age will result in such persons no longer being considered as a minor.

*Person.* An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, political subdivision, or an agency of a State.

*Policyholder.* An applicant whose properly completed application for insurance under the crop insurance program has been accepted by FCIC or an insurance provider.

*Reinsurance agreement.* An agreement between two parties by which an insurer cedes to a reinsurer certain liabilities arising from the insurer's sale of insurance policies.

*Reinsured company.* A private insurance company having a Standard Reinsurance Agreement, or other reinsurance agreement, with FCIC, whose crop insurance policies are approved and reinsured by FCIC.

*Scheduled installment payment agreement.* An agreement between a person and FCIC or the insurance provider to satisfy financial obligations of the person under conditions which modify the terms of the original debt.

*Settlement.* An agreement between a person and FCIC or the insurance provider to resolve a dispute arising from a debt or other administrative determination.

*SSN.* An individual's Social Security Number as required under section 6109 of the Internal Revenue Code of 1986.

*Standard Reinsurance Agreement (SRA).* The primary reinsurance agreement between the reinsured company and FCIC.

*Substantial beneficial interest.* An interest held by any person of at least 10 percent or more in the applicant or policyholder.

*System of records.* Records established and maintained by FCIC and FSA containing SSN or EIN data, name, address, city and State, applicable policy numbers, and other information related to Federal crop programs as required by FCIC, from which information is retrieved by a personal identifier including the SSN, EIN, name, or other unique identifier of a person.

### § 400.678 Applicability.

This subpart applies to any program administered by FCIC under the Act, including:

(a) The catastrophic risk protection plan of insurance;

(b) The limited and additional coverage plans of insurance as authorized under sections 508(c) and 508(m) of the Act; and

(c) Private insurance products authorized under section 508(h) of the Act and reinsured by FCIC.

**§ 400.679 Criteria for ineligibility.**

Any person may be determined to be ineligible to participate in any program administered by FCIC under the authority of the Act, if the person meets one or more of the following criteria:

(a) Has a delinquent debt on a crop insurance policy, issued or reinsured by FCIC, or any delinquent debt due FCIC under the Act. Any person with a delinquent debt owed to FCIC or to the insurance provider shall be ineligible to participate in any program administered under the authority of the Act. Such determinations will be in accordance with 7 CFR 400.459. The existence and delinquency of the debt must be verifiable.

(b) Has violated the controlled substance (7 CFR part 718) provisions of the Food Security Act of 1985, as amended. Any person who violates the controlled substance provisions of the Food Security Act of 1985, as amended, shall be ineligible to participate in any program administered under the Act.

(c) Has been disqualified under section 506(n) of the Act and 7 CFR part 400, subpart R. Any person who is disqualified in any administrative proceeding shall be ineligible to participate in any program administered under the Act. Ineligibility determinations resulting from administrative proceedings will not be stayed pending review. However, reversal of the determination will date back to the time of determination.

**§ 400.680 Determination and notification of ineligibility.**

(a) The insurance provider must send a written notice of the debt to the person, including the time frame in which the debt must be paid, and provide the person with a meaningful opportunity to contest the amount or existence of the debt. After the insurance provider has evaluated the person's response, if any, and determined that the debt is owed and delinquent, the insurance provider should submit the documentation establishing the existence and amount of the debt to FCIC, including any response by the person.

(b) If an insurance provider or any other authorized person has evidence that a person meets any other criteria set forth in § 400.679, they must submit the evidence to FCIC.

(c) After FCIC verifies that the person has met one or more of the criteria stated in § 400.679, FCIC will issue a Notice of Ineligibility and mail such notice to the person's last known address and to the insurance provider.

(d) The Notice of Ineligibility will state the criteria upon which the determination of ineligibility has been based, a brief statement of the facts to support the determination, the time period of ineligibility, and the persons right to an appeal of the ineligibility determination.

(e) Within 30 days of receiving the Notice of Ineligibility, any person receiving such a notice may appeal the determination of ineligibility to the National Appeals Division in accordance with 7 CFR part 11.

(f) If the person appeals the determination of ineligibility to the National Appeals Division, the insurance provider will be notified and provided with an opportunity to participate in the proceeding if permitted by 7 CFR part 11.

**§ 400.681 Effect of ineligibility.**

(a) The period of ineligibility will be effective:

(1) For ineligibility as a result of a delinquent debt, the date the debt has been determined to be delinquent until the debt has been paid in full, discharged in bankruptcy, or the person has executed a scheduled installment payment agreement;

(2) For ineligibility as a result of a violation of the controlled substance provisions of the Food Security Act of 1985, at the beginning of the crop year in which the producer was convicted and the four subsequent consecutive crop years; and

(3) For ineligibility as a result of a disqualification under section 506(n) of the Act, the date that the Administrative Law Judge signs the order disqualifying the person until the period specified in the order of disqualification has expired.

(b) Once the person has been determined to be ineligible:

(1) All policies in which the ineligible person is the sole insured will be void for the period specified in § 400.681(a);

(2) If the ineligible person is a general partnership, all partners will be individually ineligible and any policy in which a partner has a 100 percent interest will be void for the period specified in § 400.681(a). The partnership and all partners will be removed from any policy in which they have a substantial beneficial interest, and the policyholder share under the policies will be reduced commensurate with the ineligible person's share;

(3) If the applicant or policyholder is a corporation, partnership, or other business entity, and an ineligible person has a substantial beneficial interest in the applicant or policyholder, the application may be accepted or existing policies remain in effect, although the ineligible person will be removed from the policies and the policyholder share under the policies will be reduced commensurate with the ineligible person's share;

(4) If the applicant or policyholder is a corporation, partnership, or other business entity that was created to conceal the interest of a person in the farming operation or to evade the ineligibility determination of a person with a substantial beneficial interest in the applicant or policyholder, the corporation, partnership or other business entity will be disregarded, the individual shareholders or partners will be personally responsible, and any shareholder or partner that is ineligible will be removed from the policy and the policyholder share under the policies will be reduced commensurate with the ineligible person's share;

(5) Any indemnities or payments made on a voided policy, or on the portion of the policy reduced because of ineligibility, will be declared overpayments and must be repaid; and

(6) If the policy is voided, all producer paid premiums may be refunded, or if an ineligible person is removed from a policy, the portion of the producer paid premium commensurate with the ineligible person's share may be refunded, less a reasonable amount for expense and handling in accordance with 7 CFR 400.47.

(c) The spouse and minor children of an individual are considered to be the same as the individual for purposes of this subpart except that:

(1) The spouse who was actively engaged in farming in a separate farming operation will be a separate person with respect to that separate farming operation so long as that operation remains separate and distinct from any farming operation conducted by the other spouse (Transfers of interest in a farming operation from one spouse to another will not be considered as a separate farming operation.);

(2) A minor child who is actively engaged in farming in a separate farming operation will be a separate person with respect to that separate farming operation if:

(i) The parent or other entity in which the parent has a substantial beneficial interest does not have any interest in the

minor's separate farming operation or in any production from such operation;

(ii) The minor has established and maintains a separate household from the parent;

(iii) The minor personally carries out the farming activities with respect to the minor's farming operation; and

(iv) The minor establishes separate accounting and record keeping for the minor's farming operation.

**§ 400.682 Criteria for reinstatement of eligibility.**

A person who has been determined ineligible may have eligibility reinstated as follows:

(a) A delinquent debt owed on a crop insurance policy insured or reinsured by FCIC or any delinquent debt due FCIC. Eligibility may be reinstated after the debt is paid in full or discharged in bankruptcy, or the person has executed a scheduled installment payment agreement accepted by FCIC or the insurance provider. Eligibility may be reinstated as of the date the debt is paid, the date the agreement is accepted, or the date the debt is discharged in bankruptcy.

(b) Violations of the controlled substance provisions of the Food Security Act of 1985, as amended. Eligibility may be reinstated after the period of ineligibility stated in § 400.681 has expired.

(c) Disqualification under section 506(n) of the Act. Eligibility may be reinstated when the period of disqualification determined in the administrative proceedings has expired and payment of all penalties and overpayments have been completed.

(d) Timing of reinstatement of eligibility. After eligibility has been reinstated, the person must complete a new application for crop insurance coverage on or before the applicable sales closing date. If the date of reinstatement of eligibility occurs after the applicable sales closing date for the crop year, the person may not participate until the following crop year. If the National Appeals Division determines that the person should not have been placed on the Ineligible Tracking System, reinstatement will be effective at the beginning of the crop year for which the producer was listed on the Ineligible Tracking System and the person will be entitled to all applicable benefits under the policy.

**§ 400.683 Administration and maintenance.**

(a) Ineligible producer data will be maintained in a system of records in accordance with the Privacy Act, 5 U.S.C. 552a.

(1) The Ineligible Tracking System is a record of all persons who have been determined to be ineligible for participation in any program pursuant to this subpart. This system contains identifying information of the ineligible person including, but not limited to, name, address, telephone number, SSN or EIN, reason for ineligibility, and time period for ineligibility.

(2) Information in the Ineligible Tracking System may be used by Federal agencies, FCIC employees, contractors, and reinsured companies and their personnel who require such information in the performance of their duties in connection with any program administered under the Act. The information may be furnished to other users including, but not limited to, FCIC contracted agencies; credit reporting agencies and collection agencies; in response to judicial orders in the course of litigation; and other users as may be appropriate or required by law or regulation. The individual information will be made available in the form of various reports and notices produced from the Ineligible Tracking System, based on valid requests.

(3) Supporting documentation regarding the determination of ineligibility and reinstatement of eligibility will be maintained by FCIC and FSA, or its contractors, reinsured companies, and Federal and State agencies. This documentation will be maintained consistent with the electronic information contained within the Ineligible Tracking System.

(b) Information may be entered into the Ineligible Tracking System by FCIC or FSA personnel.

(c) All persons applying for or renewing crop insurance contracts issued or reinsured by FCIC will be subject to validation of their eligibility status against the Ineligible Tracking System. Applications or benefits approved and accepted are considered approved or accepted subject to review of eligibility status in accordance with this subpart.

Signed in Washington, D.C., July 30, 1997.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 97–20503 Filed 8–4–97; 8:45 am]

BILLING CODE 3410–08–U

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 77

**[Docket No. 96–093–2]**

### Tuberculosis in Cattle and Bison; State Designation

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Wisconsin from an accredited-free (suspended) State to an accredited-free State. We have determined that Wisconsin meets the criteria for designation as an accredited-free State.

**EFFECTIVE DATE:** The interim rule was effective on May 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mitchell A. Essey, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road, Unit 36, Riverdale, MD 20737–1231, (301) 734–7727; or e-mail: messey@aphis.usda.gov.

**SUPPLEMENTARY INFORMATION:**

#### Background

In an interim rule effective and published in the **Federal Register** on May 7, 1997 (62 FR 24801–24802, Docket No. 96–093–1), we amended the tuberculosis regulations in 9 CFR part 77 by removing Wisconsin from the list of accredited-free (suspended) States in § 77.1 and adding it to the list of accredited-free States in that section.

Comments on the interim rule were required to be received on or before July 7, 1997. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping

requirements, Transportation, Tuberculosis.

## PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 77 and that was published at 62 FR 24801–24802 on May 7, 1997.

**Authority:** 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 29th day of July 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97–20506 Filed 8–4–97; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–CE–66–AD; Amendment 39–10098; AD 97–15–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Aeromot-Industria Mecanico Metalurgica Ltda. Model AMT–200 Powered Sailplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 97–15–07, which was sent previously to all known U.S. owners and operators of Aeromot-Industria Mecanico Metalurgica Ltda. (Aeromot) Model AMT–200 powered sailplanes. This AD requires immediately inspecting, using non-destructive testing (NDT) methods, the forward horizontal stabilizer front bolt, P/N 53451, for defects (scratches, damaged threads, or surface cracks, etc.), and replacing the bolt immediately if found defective or at a certain time period if not found defective. This AD was the result of a failure of the forward horizontal stabilizer bolt, part number (P/N) 53451, on one of the affected powered sailplanes. This failure was caused by a low cycle fatigue crack that was induced by overtorquing the bolt. The actions specified by this AD are intended to prevent failure of the forward horizontal stabilizer bolt, which could result in separation of the horizontal stabilizer from the powered sailplane and consequent loss of control.

**DATES:** Effective August 15, 1997, to all persons except those to whom it was made immediately effective by priority letter AD 97–15–07, issued July 11, 1997, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 15, 1997.

Comments for inclusion in the Rules Docket must be received on or before September 30, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 97–CE–66–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Grupo Aeromot, Aeromot-Industria Mecanico Metalurgica Ltda., Av. das Industries-1210, Bairro Anchieta, Caixa Postal 8031, 90200-Porto Alegre-RS, Brazil. This information may also be examined at the Rules Docket at the address above, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis Jackson, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337–2748; telephone (404) 305–7358; facsimile (404) 305–7348.

**SUPPLEMENTARY INFORMATION:**

### Events Leading to This AD

The Centro Tecnico Aeroespacial (CTA), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain Aeromot Model AMT–200 powered sailplanes. The CTA of Brazil reported a failure of the forward horizontal stabilizer bolt, part number (P/N) 53451. This failure was caused by a low cycle fatigue crack that was induced by overtorquing the bolt.

The horizontal stabilizer bolts on the Aeromot Models AMT–100 and AMT–200 powered sailplanes are torqued with a special wrench provided by the manufacturer at delivery of the powered sailplane. When this special wrench is utilized, overtorquing of these bolts is impossible. When the forward horizontal stabilizer bolt on the eight Aeromot Model AMT–200 powered sailplanes affected by this priority letter AD were torqued at the factory, this special wrench was not used and these forward horizontal stabilizer bolts were overtorqued.

### Relevant Service Information and CTA Action

Aeromot has issued Service Bulletin S.B. No. 100–53–042, Issue Date: June 6, 1997; Revision Date: REV.1, July 3, 1997. This service bulletin includes procedures for inspecting and replacing the forward horizontal stabilizer front bolt on the affected Aeromot Model AMT–100 powered sailplanes.

The CTA for Brazil classified this service bulletin as mandatory and issued CTA EAD No. 97–07–01, in order to assure the continued airworthiness of these airplanes in Brazil.

### The FAA's Determination and Explanation of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Aeromot Model AMT–200 powered sailplanes of the same type design, the FAA issued priority letter AD 97–15–07, dated July 11, 1997, to prevent failure of the forward horizontal stabilizer bolt, which could result in separation of the horizontal stabilizer from the powered sailplane and consequent loss of control. The AD requires immediately inspecting, using non-destructive testing (NDT) methods, the forward horizontal stabilizer front bolt, P/N 53451, for defects (scratches, damaged threads, or surface cracks, etc.), and replacing the bolt immediately if found defective or at a certain time period if not found defective.

Accomplishment of the required inspection and replacement is in accordance with Aeromot Industria Ltda Service Bulletin S.B. No. 100–53–042, Issue Date: June 6, 1997; Revision Date: REV.1, July 3, 1997. This AD also allows the option of replacing the bolt immediately instead of accomplishing the NDT inspection.

Sections 61.107 (d)(1) and 61.127 (d)(1) of the Federal Aviation Regulations (14 CFR 61.107 (d)(1) and 14 CFR 61.127 (d)(1)) give flight proficiency requirements for pilots, including the assembly and disassembly of gliders and sailplanes. Therefore, the pilot is authorized to accomplish the bolt replacement required by this AD.

### Determination of the Effective Date of the AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 11, 1997, to all

known U.S. operators of Aeromot Model AMT–200 powered sailplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–66–AD.'' The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the rules docket. A copy of it, if filed, may be obtained from the rules docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 USC 106(g), 40113, 44701.

**§39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

**97–15–07 Aeromot-Industria Mecanico Metalurgica LTDA.:** Amendment 39–10098; Docket No. 97–CE–66–AD.

*Applicability:* Model AMT–200 powered sailplanes, serial numbers 200.057, 200.058, 200.059, 200.063, 200.065, 200.066, 200.071, and 200.072, certificated in any category.

**Note 1:** This AD applies to each powered sailplane 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 powered sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated after the effective date of this AD, unless already accomplished, except to those operators receiving this action by priority letter issued July 11, 1997, which made these actions effective immediately upon receipt.

To prevent failure of the forward horizontal stabilizer bolt, which could result in separation of the horizontal stabilizer from the powered sailplane and consequent loss of control, accomplish the following:

(a) Prior to further flight after the effective date of this AD, inspect, using non-destructive testing (NDT) methods, the forward horizontal stabilizer front bolt, part number (P/N) 53451, for defects (scratches, damaged threads, or surface cracks, etc.). If any defects are found, prior to further flight, replace the bolt with a new one of the same part number. Accomplish the inspection and replacement in accordance with the instructions in Aeromot Industria Ltda Service Bulletin S.B. No. 100–53–042, Issue Date: June 6, 1997; Revision Date: REV.1, July 3, 1997.

(b) Within 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished as required by paragraph (a) of this AD, replace the forward horizontal stabilizer front bolt, P/N 53451, with a new one of the same part number. Accomplish the replacement in accordance with the instructions in Aeromot Industria Ltda Service Bulletin S.B. No. 100–53–042, Issue Date: June 6, 1997; Revision Date: REV.1, July 3, 1997.

(c) The replacement required by this AD may be accomplished prior to further flight after the effective date of this AD in place of the inspection required by paragraph (a) of this AD.

(d) Sections 61.107 (d)(1) and 61.127 (d)(1) of the Federal Aviation Regulations (14 CFR 61.107 (d)(1) and 14 CFR 61.127 (d)(1)) give flight proficiency requirements for pilots, including the assembly and disassembly of gliders and sailplanes. Therefore, the bolt replacement required by this AD may be performed by the powered sailplane owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(f) The inspection and replacement required by this AD shall be done in accordance Aeromot Industria Ltda Service Bulletin S.B. No. 100–53–042, Issue Date: June 6, 1997; Revision Date: REV.1, July 3, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Grupo Aeromot, Aeromot-Industria Mecanico Metalurgica Ltda., Av. das

Industries-1210, Bairro Anchieta, Caixa Postal 8031, 90200-Porto Alegre-RS, Brazil. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment (39–10098) becomes effective on August 15, 1997, to all persons except those persons to whom it was made immediately effective by priority letter AD 97–15–07, issued July 11, 1997, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on July 21, 1997.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–20316 Filed 8–4–97; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF COMMERCE

## Bureau of Export Administration

## 15 CFR Parts 738, 740, and 774

**[Docket No. 970703164–7164–01]**

**RIN 0694–AB61**

## Liberalization of Export Controls for Oscilloscopes (Including Certain Transient Recorders), Affected ECCNs: 3A202, 3A292, 3E001, 3E201, and 3E292

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Export Administration maintains the Commerce Control List (CCL, 15 CFR part 774), which appears in the Export Administration Regulations (EAR). This rule revises the reason for control for oscilloscopes (including certain transient recorders) from NP Column 1 to NP Column 2, in the Commerce Country Chart (Supplement No. 1 to 15 CFR part 738). In addition, revisions are made to NP Column 2 of the Commerce Country Chart, and Column [D:2] Nuclear of Country Group D, to reflect that Algeria, Andorra, Angola, Comoros, Djibouti, Micronesia, Oman, United Arab Emirates, and Vanuatu have signed the Nuclear Non-Proliferation Treaty. This revision will substantially reduce the paperwork burden on the public by decreasing the number of license applications exporters and reexporters are required to submit for oscilloscopes.

**EFFECTIVE DATE:** August 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** Joseph Chuchla, Office of Nuclear & Missile Technology Controls, Telephone: (202) 482–4188.

**SUPPLEMENTARY INFORMATION:**

### Background

In May of 1997, the Nuclear Suppliers Group (NSG) agreed to remove oscilloscopes from the Annex to the ''Nuclear-Related Dual-Use Equipment, Materials, and Related Technology List'' (the Annex) published by the International Atomic Energy Agency and adhered to by the United States and other subscribing governments in the NSG.

The items on the CCL that are subject to nuclear nonproliferation controls are referred to as the Nuclear Referral List (NRL). The NRL includes NSG-controlled items and other items subject to control for nuclear non-proliferation reasons by the United States. This Administration has ongoing concerns about the value and technical significance of oscilloscopes in nuclear weapons testing; therefore, the Administration has decided not to remove oscilloscopes from the NRL. The U.S. proposed, and the NSG approved, a statement of NSG members, commitment to preventing the use of oscilloscopes contrary to the basic principle of non-proliferation. The members agreed to apply available authority to ensure exports are not diverted or used contrary to Annex Guidelines. The U.S., U.K., and Switzerland (the only producers/exporters of the relevant oscilloscopes) agreed to retain national export controls and to exercise vigilance on these items.

Where a license was required for all non-NSG member countries (NP Column 1 of the Commerce Country Chart, Supplement No. 1 to 15 CFR part 738) and countries that have been designated terrorist countries of concern (AT Column 1), this rule revises the license requirements for oscilloscopes (including transient recorders other than those controlled by 3A002.a.5) and specially designed components therefor, in that a license will only be required for nuclear countries of concern (NP Column 2) and countries that have been designated terrorism-supporting countries (AT Column1).

This final rule amends the CCL (15 CFR part 774) by removing ECCN 3A202 and creating a new ECCN 3A292 to accommodate the new nuclear level of control (NP Column 2) for oscilloscopes (including transient recorders other than those controlled by 3A002.a.5) and specially designed components therefor. Also, a revision is made to the heading and the Reason for Control sections of ECCN 3E201 to remove the reference to ECCN 3A202 and to the heading and license requirement sections of ECCN 3E001. In addition, this rule amends the CCL by creating a new ECCN 3E292 to accommodate the unilateral technology controls on oscilloscopes (including transient recorders other than those controlled by 3A002.a.5) and specially designed components therefor.

Lastly, this rule will revise the Commerce Country Chart in Supplement No. 1 to part 738 and Country Group D in Supplement No. 1 to part 740 to reflect that Algeria, Andorra, Angola, Comoros, Djibouti, Micronesia, Oman, United Arab Emirates, and Vanuatu have become signatories to the Nuclear Non-Proliferation Treaty. Therefore, the Commerce Country Chart is amended by removing the corresponding ''x'' under the heading ''NP Column 2'' for these countries and Country Group D is amended by removing the reference ''x'' under the heading ''[D:2] Nuclear'' for the same countries.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notice of August 15, 1995 and August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)).

### Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088. The effect of this rule will decrease license application requirements, thus decreasing the paperwork burden on the public to the Department of Commerce. Notwithstanding any other provision of law, no person is required to respond nor will a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective

date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

**List of Subjects**

*15 CFR Parts 738 and 774*

Exports, Foreign trade.

*15 CFR Part 740*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 738, 740, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

The authority citation for 15 CFR part 738 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 720; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp. 917 (1995); E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 3 CFR, 1996 Comp. 298 (1997).

2. The authority citation for 15 CFR part 740 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 3 CFR, 1996 Comp. 298 (1997).

3. The authority citation for 15 CFR part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 3 CFR, 1996 Comp. 298 (1997).

**PART 738—[AMENDED]**

4. Supplement No. 1 to part 738, Commerce Country Chart, is amended by removing the corresponding ''x'' under the heading ''NP Column 2'' for the following countries: Algeria, Andorra, Angola, Comoros, Djibouti, Micronesia, Oman, United Arab Emirates, and Vanuatu.

**PART 740—[AMENDED]**

5. In Supplement No. 1 to part 740, Country Group D, is revised to read as follows:

Supplement No. 1 to Part 740

* * * * *

• COUNTRY GROUP D

| Country | [D: 1] National Security | [D: 2] Nuclear | [D: 3] Chemical & Biological | [D: 4] Missile Technology |
|---|---|---|---|---|
| Afghanistan | | | X | |
| Albania | X | | | |
| Algeria | | | | |
| Andorra | | | | |
| Angola | | | | |
| Armenia | X | | X | |
| Azerbaijan | X | | X | |
| Bahrain | | | X | X |
| Belarus | X | | X | |
| Bulgaria | X | | X | |
| Burma | | | X | |
| Cambodia | X | | | |
| China (PRC) | X | | X | X[1] |
| Comoros | | | | |
| Cuba | | X | X | |
| Djibouti | | | | |
| Egypt | | | X | X |
| Estonia | X | | | |
| Georgia | X | | X | |
| India | | X | X | X[1] |
| Iran | | X | X | X[1] |
| Iraq | | X | X | X |
| Israel | | X | X | X |
| Jordan | | | X | X |
| Kazakhstan | X | | X | |
| Korea, North | | X | X | X[1] |
| Kuwait | | | X | X |
| Kyrgyzstan | X | | X | |
| Laos | X | | | |
| Latvia | X | | | |
| Lebanon | | | X | X |
| Libya | | X | X | X |

• COUNTRY GROUP D—Continued

| Country | [D: 1] National Security | [D: 2] Nuclear | [D: 3] Chemical & Biological | [D: 4] Missile Technology |
|---|---|---|---|---|
| Lithuania | X | | | |
| Micronesia, Federated States of | | | | |
| Moldova | X | | X | |
| Mongolia | X | | X | |
| Oman | | | X | X |
| Pakistan | | X | X | X[1] |
| Qatar | | | X | X |
| Romania | X | | | |
| Russia | X | | X | |
| Saudi Arabia | | | X | X |
| Syria | | | X | X |
| Taiwan | | | X | |
| Tajikstan | X | | X | |
| Turkmenistan | X | | X | |
| Ukraine | X | | X | |
| United Arab Emirates | | | X | X |
| Uzbekistan | X | | X | |
| Vanuatu | | | | |
| Vietnam | X | | X | |
| Yemen | | | X | X |

[1] Certain Missile Technology projects have been identified in the following countries:
China—M Series Missiles CSS–2.
India—Agni, Prithvi, SLV–3 Satellite Launch Vehicle, Augmented Satellite Launch Vehicle (ASLV), Polar Satellite Launch Vehicle (PSLV), Geostationary Satellite Launch Vehicle (GSLV).
Iran—Surface-to-Surface Missile Project, Scud Development Project.
Korea, North—No Dong I, Scud Development Project.
Pakistan—Half Series Missiles.

* * * * *

## PART 774—[AMENDED]

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3 (Electronics Design, Development and Production) is amended by:

a. Removing ECCN 3A202;

b. Adding a newly created ECCN 3A292, to be placed after ECCN 3A233 on the CCL;

c. Revising the Heading and the License Requirement section of ECCN 3E001 and the Heading of 3E201;

d. Adding a newly created ECCN 3E292, to be placed after ECCN 3E201, to read as follows:

*Category 3—Electronics Design, Development and Production*

A. Equipment, Assemblies and Components

* * * * *

### 3A292 Oscilloscopes and transient recorders other than those controlled by 3A002.a.5, and specially designed components therefor

**License Requirements**

*Reason for Control:* NP, AT

| *Control(s)* | *Country Chart* |
|---|---|
| NP applies to entire entry. | NP Column 2 |
| AT applies to entire entry. | AT Column 1 |

**License Exceptions**

*LVS:* N/A
*GBS:* N/A
*CIV:* N/A

**List of Items Controlled**

*Unit:* Number
*Related Controls:* N/A
*Related Definitions:* (a) Specially designed components specified in this item are the following, for analog oscilloscopes:
1. Plug-in units;
2. External amplifiers;
3. Pre-amplifiers;
4. Sampling devices;
5. Cathode ray tubes.

(b) For the purpose this entry, ''Bandwidth'' is defined as the band of frequencies over which the deflection on the cathode ray tube does not fall below 70.7% of that at the maximum point measured with a constant input voltage to the oscilloscope amplifier.

*Items*

a. Non-modular analog oscilloscopes having a bandwidth of 1 GHz or greater;

b. Modular analog oscilloscope systems having either of the following characteristics:

b.1. A mainframe with a bandwidth of 1 GHz or greater; or

b.2. Plug-in modules with an individual bandwidth of 4 GHz or greater;

c. Analog sampling oscilloscopes for the analysis of recurring phenomena with an effective bandwidth greater than 4 GHz;

d. Digital oscilloscopes and transient recorders using analog-to-digital conversion techniques, capable of storing transients by sequentially sampling one-shot input signals at successive intervals of less than 1 ns (greater than 1 giga-sample per second), digitizing to 8 bits or greater resolution, and storing 256 or more samples.

* * * * *

### 3E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of items controlled by 3A (except 3A292, 3A980, 3A981, and 3A992 to 3A994), 3B (except 3B991) or 3C

**License Requirements**

*Reason for Control:* NS, MT, NP, AT

| *Control(s)* | *Country Chart* |
|---|---|
| NS applies to ''technology'' for items controlled by 3A001, 3A002, 3B001 to 3B008 or 3C001 to 3C004. | NS Column 1 |
| MT applies to ''technology'' for equipment controlled by 3A001 or 3A101 for MT reasons. | MT Column 1 |
| NP applies to ''technology'' for equipment controlled by 3A001, 3A201, 3A225 to 3A233 for NP reasons. | NP Column 1 |
| AT applies to entire entry. | AT Column 1 |

* * * * *

**3E201 ''Technology'' according to the General Technology Note for the ''use'' of items controlled by 3A001.e.2, e.3, and e.5, 3A201, 3A225 to 3A233**

* * * * *

**3E292 ''Technology'' according to the General Technology Note for the ''development'', ''production'', or ''use'' of items controlled by 3A292**

**License Requirements**

*Reason for Control:* NP, AT

| *Control(s)* | *Country Chart* |
|---|---|
| NP applies to entire entry. | NP Column 2 |
| AT applies to entire entry. | AT Column 1 |

**License Exceptions**

*CIV:* N/A

*TSR:* N/A

**List of Items Controlled**

*Unit:* N/A

*Related Controls:* N/A

*Related Definitions:* N/A

*Items:* The list of items controlled is contained in the ECCN heading.

* * * * *

Dated: July 29, 1997.

**Iain S. Baird,**

*Acting Assistant Secretary for Export Administration.*

[FR Doc. 97–20415 Filed 8–4–97; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 177

### Indirect Food Additives: Polymers

*CFR Correction*

In title 21 of the Code of Federal Regulations, parts 170 to 199, revised as of April 1, 1997, on page 263, in § 177.1520 in the table in paragraph (b) in the entry for ''Polymethylsilsesquioxane'' the CAS number should read ''68554–70–1''.

**BILLING CODE 1505–01–D**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 178

**[Docket No. 89F–0176]**

### Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of disodium 4-isodecyl sulfosuccinate as an emulsifier in the production of food-contact polymers. This action responds to a petition filed by American Cyanamid Co.

**DATES:** The regulation is effective August 5, 1997; written objections and request for a hearing by September 4, 1997.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Richard H. White, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of June 13, 1989 (54 FR 25174), FDA announced that a food additive petition (FAP 9B4122) had been filed by American Cyanamid Co., One Cyanamid Plaza, Wayne, NJ 07470 (currently Cytec Industries Inc., c/o Keller and Heckman, 1001 G St. NW., Washington, DC 20001). The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) and § 178.3400 *Emulsifiers and/or surface active agents* (21 CFR 178.3400) to provide for the safe use of disodium 4-isodecyl sulfosuccinate as a component of adhesives and as an emulsifier in the production of food-contact polymers. The petitioner later requested that the agency proceed with a decision regarding the regulation of the additive for use only as a component of adhesives in food-contact materials. The agency published a final rule in the **Federal Register** of April 20, 1993 (58 FR 21257) amending § 175.105 to provide for the use of disodium 4-isodecyl sulfosuccinate as a component of adhesives. In that final rule, the agency stated that its decision regarding the petitioned use of the additive as an emulsifier in the production of food-contact polymers would be addressed in a future **Federal Register** document. The agency is addressing that decision in this final rule.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the subject additive as an emulsifier in the production of food-contact polymeric coatings is safe, that the additive will have the intended technical effect, and that therefore, § 178.3400 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before September 4, 1997, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the

objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 178**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

**Authority:** Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3400 is amended in the table in paragraph (c) by alphabetically adding a new entry under the headings ''List of substances'' and ''Limitations'' to read as follows:

**§ 178.3400 Emulsifiers and/or surface active agents.**

* * * * *

(c) * * *

| List of substances | Limitations |
|---|---|
| * * * * | * * * |
| Disodium 4-isodecyl sulfosuccinate (CAS Reg. No. 37294–49–8). | For use only as an emulsifier at levels not to exceed 5 percent by weight of polymers intended for use in coatings. |
| * * * * | * * * |

* * * * *

Dated: July 23, 1997.

**Janice F. Oliver,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 97–20498 Filed 8-4-97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 8728]**

**RIN 1545–AQ94**

## Procedure for Changing a Method of Accounting Under Section 263A

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final regulations relating to the requirements for changing a method of accounting for costs subject to section 263A. The regulations provide guidance regarding changes in method of accounting for costs incurred in producing property and acquiring property for resale. The regulations affect taxpayers changing their method of accounting for costs subject to section 263A.

**DATES:** These regulations are effective August 5, 1997.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Lynn Oseekey, (202) 622–4970 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

On March 30, 1987 and August 7, 1987, temporary regulations under section 263A were published in the **Federal Register** (TD 8131, 52 FR 10052 and TD 8148, 52 FR 29375), and cross-referenced to notices of proposed rulemaking published in the **Federal Register** on the same date (52 FR 10118 and 52 FR 29391). The temporary regulations contain rules for taxpayers changing their method of accounting to comply with the capitalization rules of section 263A. A public hearing on these temporary and proposed regulations was held on December 7, 1987.

On August 9, 1993, final regulations under section 263A were published in the **Federal Register** (TD 8482, 58 FR 42198). These final regulations did not address the accounting method provisions in the 1987 temporary regulations, which continued in effect. On August 5, 1994, final and temporary regulations were published in the **Federal Register** (TD 8559, 59 FR 39958). These final regulations address ''pick and pack costs'' and other expenses. The August 5, 1994 temporary regulations renumbered the accounting method provisions in the 1987 temporary regulations from § 1.263A–1T(e) to § 1.263A–7T.

This document adopts, with modifications, § 1.263A–7T as final regulations.

### Explanation of Provisions

In 1987, the IRS and the Treasury Department issued temporary regulations that provide guidance to taxpayers changing their method of accounting to comply with the capitalization rules of section 263A. The regulations provide automatic consent for taxpayers required to change their method of accounting for the first taxable year section 263A was effective.

Subsequent to promulgation of the 1987 temporary regulations, the IRS and the Treasury Department issued various revenue procedures that set forth rules and procedures applicable to certain changes in method of accounting for costs subject to section 263A for which taxpayers can obtain automatic consent. These revenue procedures provide automatic consent to change the method of accounting in years other than the first taxable year section 263A was effective. Where automatic consent is not available by revenue procedure, taxpayers can obtain the Commissioner's consent to change a method of accounting for costs subject to section 263A under Rev. Proc. 97–27 (1997–21 I.R.B. 10).

Rev. Proc. 97–27 and the automatic change revenue procedures describe how a change in method of accounting may be effected, but they do not describe how inventory and other property on hand at the beginning of the year of change should be revalued. These final regulations provide guidance regarding how taxpayers must revalue property in connection with a change in method of accounting for costs subject to section 263A. The revaluation rules for inventory are substantially similar to the revaluation rules contained in the 1987 temporary

regulations. Section 1.263A–7(c) provides guidance regarding how items or costs included in beginning inventory in the year of change must be revalued. Section 1.263A–7(d) provides guidance regarding how non-inventory property on hand at the beginning of the year of change must be revalued.

The regulations also provide certain rules that apply to changes in method of accounting for costs subject to section 263A, in addition to the rules and procedures that apply under the applicable revenue procedures. See, § 1.263A–7(b).

In addition, the regulations clarify whether certain changes are changes in method of accounting under section 263A and therefore are within the scope of the regulations. For example, a change from one permissible capitalization method, such as the simplified resale method in former § 1.263A–1T(d)(4), to another permissible capitalization method, such as the simplified resale method in § 1.263A–3(d), is a change in method of accounting under section 263A and is therefore within the scope of the regulations. See § 1.263A–7(a)(5).

The final regulations delete certain provisions of § 1.263A–7T that were primarily applicable to accounting method changes made in 1987. For example, the final regulations do not incorporate provisions such as § 1.263A–7T(e)(2), which provide automatic consent to make the change in method of accounting for the first taxable year section 263A was effective, and § 1.263A–7T(e)(7) (iii), (iv) and (v) and § 1.263A–7T(e)(8), which provide special rules for adjusting the revaluation factor for costs attributable to different methods of accounting for depreciation (including cost recovery) and differences in the percentage of fixed indirect production costs that were expensed by taxpayers using the practical capacity concept.

**Certain Administrative Guidance**

The final regulations incorporate the provisions of Notice 88–23 (1988–1 C.B. 490) (ordering rules for accounting method changes), and sections IV(A) (guidance regarding deferred intercompany exchanges) and IV(B) (permission to elect a new base year for taxpayers using the last-in, first-out (LIFO) inventory method) of Notice 88–86 (1988–2 C.B. 401). These notices or portions thereof are withdrawn for taxable years to which this Treasury decision applies.

**Effect on Other Documents**

The following publications are obsolete as of August 5, 1997: Notice 88–23 (1988–1 C.B. 490). Notice 88–86 (1988–2 C.B. 401), sections IV(A) and IV(B).

**Public Comments**

The IRS and the Treasury Department received a number of comments in response to the 1987 temporary and proposed regulations. Most of the comments received in response to the temporary regulations issued in March 1987 were considered in connection with the temporary regulations issued in August 1987. In general, those comments are not discussed again here.

**Revaluing Beginning Inventory—the 3-Year Average Method**

*A. Extending Availability of the Method*

Under the temporary regulations, taxpayers using the dollar-value LIFO inventory method were permitted to use a 3-year average method for revaluing their beginning inventory in the year they changed their method of accounting to comply with section 263A. Several commentators suggested that taxpayers other than those on the dollar-value LIFO inventory method should also be permitted to use this 3-year average method for revaluing beginning inventory in the year of change. Specifically, commentators suggested that the 3-year average method be made available to taxpayers using the specific goods LIFO inventory method. Another suggestion was that taxpayers using the first-in, first-out (FIFO) inventory method should be permitted to use the 3-year average method even though those taxpayers may have sufficient information to revalue their inventory under the facts and circumstances method.

The final regulations do not adopt these suggestions. The House and Senate Reports to the Tax Reform Act of 1986 indicate Congress intended that taxpayers generally revalue their inventory in the year of change using the facts and circumstances method. Because Congress realized that dollar-value LIFO taxpayers may not have the data needed to use the facts and circumstances method, it suggested two other revaluation methods that could be used in conjunction with, or in lieu of, the facts and circumstances method. The 3-year average method was one of those other methods. H.R. Rep. No. 426, 99th Cong., 1st Sess. 633–637 (1985), 1986–3 (Vol. 2) C.B. 633–637 and S. Rep. No. 313, 99th Cong., 2nd Sess. 147–152 (1986), 1986–3 (Vol. 3) C.B. 147–152. The IRS and the Treasury Department believe that limiting the 3-year average method to dollar-value LIFO taxpayers is more consistent with legislative history which expresses Congress' concern that dollar-value LIFO taxpayers may have particular problems in revaluing inventory. H.R. Rep. No. 426, 633, 1986–3 (Vol. 2) C.B. 633 and S. Rep. No. 313, 147, 1986–3 (Vol.3) C.B. 147.

*B. Altering the Mechanics of the Method*

One commentator suggested that taxpayers be permitted to revalue items or costs included in beginning inventory in the year of change by using data from the year of change instead of data from the prior three years, and calculate a section 481(a) adjustment accordingly. This commentator further suggested that three years after the year of change, the taxpayer would recompute the section 481(a) adjustment using data from the three new years to test its original adjustment under section 481(a). If the new adjustment were larger than the original adjustment by a substantial amount, the taxpayer would be required to amend its federal income tax returns. The final regulations do not adopt this suggestion. Requiring taxpayers to compute two adjustments under section 481(a) would unnecessarily complicate application of the 3-year average method.

Another commentator suggested that some taxpayers be permitted to revalue items or costs included in beginning inventory in the year of change by using data from the immediately preceding year rather than the prior three years. This proposal to use only the prior year's data would be limited to taxpayers that can show they have not had a significant change in costs over the preceding three years. This suggested modification to the 3-year average method was not adopted. The suggested modification would not substantially simplify the process of revaluing beginning inventory because taxpayers would be required to determine whether their costs significantly changed during the preceding three-year period.

*C. Limiting Costs Subject to Revaluation*

One commentator suggested that LIFO layers should be revalued only if the items of inventory comprising those layers are still in existence in the year of change. This suggestion was not adopted. However, the final regulations continue the rule in the temporary regulations that taxpayers may adjust the revaluation factor (under either the 3-year average method or the weighted average method) to the extent they can show that additional section 263A costs included in the calculation of the revaluation factor were not incurred in

the prior years in which the LIFO layers were accumulated.

*D. New Base Year*

Under the 3-year average method, taxpayers generally are required to establish a new base year. Several commentators commented that requiring link-chain LIFO taxpayers to establish a new base year is costly and pointless and suggested that these taxpayers be excluded from the general requirement that all dollar-value LIFO taxpayers establish a new base year. The IRS and the Treasury Department did not adopt this suggestion. If a new base year is not established, the current-year index, determined under the taxpayer's new method of accounting, would be multiplied by the prior-year cumulative index, determined under the taxpayer's former method of accounting, and could distort the taxpayer's LIFO inventory valuation. This distortion is eliminated when the taxpayer establishes a new base year and establishes a new index. Accordingly, the final regulations provide that all dollar-value LIFO taxpayers (whether using double extension or link-chain) should generally establish a new base year when they use the 3-year average method to revalue their inventories under section 263A.

Commentators also suggested that taxpayers using the 3-year average method and either the simplified production method or the simplified resale method be allowed, but not required, to establish a new base year. Section IV(B) of Notice 88–86 permits these taxpayers to choose whether to establish a new base year. This rule is incorporated into the final regulations.

One commentator noted that the example in the 1987 temporary regulations illustrating the 3-year average method did not use the current year revaluation factor in computing the updated base year cost of inventory. The example has been revised to use the current year revaluation factor.

**Revaluing Beginning Inventory—Facts and Circumstances Method**

One commentator suggested that specific rules or guidelines be adopted to clarify what is a reasonable estimate or procedure for revaluing beginning inventory in connection with a change in method of accounting. This suggestion was not adopted. What is a reasonable estimate or procedure must be decided on a case-by-case basis in light of all applicable facts and circumstances. The final regulations continue the provision in the temporary regulations that permissible estimates and procedures include using information from a more recent period to estimate the amount and nature of inventory costs applicable to earlier periods, and using information with respect to comparable items of inventory to estimate the costs associated with other items of inventory.

**New Base Year When the 3-Year Average Method Is Not Used**

Several commentators suggested that dollar-value LIFO taxpayers not using the 3-year average method to revalue beginning inventory be permitted to update their base year if they so choose. Section IV (B) of Notice 88–86 permits these taxpayers to establish a new base year. The final regulations adopt this rule.

**Scope of Accounting Method Change**

Several commentators suggested that the regulations should allow taxpayers to change from the specific goods LIFO inventory method to the dollar-value LIFO inventory method in connection with changing their method of accounting for costs under section 263A without obtaining the Commissioner's consent. Generally, taxpayers must secure the Commissioner's consent before effecting a change in method of accounting under section 446(e) unless this requirement is specifically waived. The IRS and the Treasury Department do not believe an exception from this general rule is warranted for changes from the specific goods LIFO inventory method to the dollar-value LIFO inventory method except to the extent permitted by § 1.472–8(f)(1).

Several commentators also suggested that taxpayers that change their method of accounting for costs subject to section 263A be permitted to make additional changes in their methods of accounting in future tax years under section 263A without obtaining additional consents from the Commissioner. The IRS and the Treasury Department have issued various revenue procedures that provide automatic consent procedures for taxpayers to change their method of accounting for costs under section 263A.

One commentator suggested that the regulations provide that when making the change from the full absorption rules of § 1.471–11 to the uniform capitalization rules of section 263A, taxpayers may cease taking into account any costs not treated as inventoriable under section 263A that may have been erroneously inventoried under prior law. The temporary regulations issued in August 1987 and the final regulations permit this result. In revaluing beginning inventory to include additional section 263A costs, taxpayers may cease capitalizing costs that had been capitalized but are not required to be capitalized under section 263A.

**Audit Protection**

Several commentators noted that taxpayers should be guaranteed audit protection for costs or items that are part of a change in method of accounting under section 263A. The IRS' long-standing administrative position is that if a taxpayer files an application to change its method of accounting in accordance with the applicable administrative guidance, for example, Rev. Proc. 97–27, an examining agent may not later propose that the taxpayer change its method of accounting for the same item for a taxable year prior to the year of change.

**Ordering Rules**

One commentator suggested that overall accounting method changes (for example, the cash receipts and disbursements method to an accrual method) should be implemented prior to any change in method of accounting for costs under section 263A. The temporary regulations generally provide that a change in method of accounting for costs under section 263A is deemed to occur prior to any other change in method of accounting effected during the year of change. The final regulations continue that general rule with four modifications. Taxpayers that are discontinuing the LIFO inventory method may make that change prior to a change in method of accounting under section 263A. Additionally, taxpayers that are changing from the specific goods LIFO inventory method to the dollar-value LIFO inventory method may make that change prior to a change in method of accounting under section 263A. Also, taxpayers that are changing their overall method of accounting from the cash method to an accrual method must make the change to an accrual method prior to a change in method of accounting under section 263A. Finally, taxpayers that are changing their method of accounting for depreciation when any portion of the depreciation is subject to section 263A must make the method change for depreciation prior to a change in method of accounting under section 263A.

**Cost Allocation Method**

Several commentators suggested that the regulations be clarified to provide that a taxpayer must use the same cost allocation method to restate its beginning inventory and to value its ongoing inventory. The final regulations clarify this point. Inventory on hand at

the beginning of the year of change is revalued as if the taxpayer's new method had applied to all prior periods. The same cost allocation method must be used both retroactively (for purposes of restating beginning inventory) and prospectively (for purposes of the current year and all subsequent years, unless the taxpayer seeks specific consent from the Commissioner to change this method of accounting).

**Intercompany Items**

One commentator suggested that taxpayers be given automatic consent to discontinue filing consolidated federal income tax returns so that they could avoid the need to revalue the amount of intercompany items resulting from the sale or exchange of inventory property in intercompany transactions. The regulations do not adopt this suggestion. Generally, taxpayers must secure the Commissioner's consent before discontinuing the filing of consolidated tax returns. The IRS and the Treasury Department do not think an exception from this general rule is warranted in this situation.

**Effective Date**

These regulations are effective for taxable years beginning on or after August 5, 1997.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these regulations is Cheryl Lynn Oseekey, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.263A–0 is amended by revising the introductory text and adding entries for § 1.263A–7 to read as follows:

**§ 1.263A–0 Outline of regulations under section 263A.**

This section lists the paragraphs in §§ 1.263A–1 through 1.263A–3 and § 1.263A–7 through 1.263A–15.

* * * * *

**§ 1.263A–7 Changing a method of accounting under section 263A.**

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(iii) Election to use transferor's LIFO layers.
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(v) Related corporation.
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(1) Need for adjustments.
(2) Revaluing property.

**§ 1.263A–1 [Amended]**

**Par. 3.** Section 1.263A–1 is amended by removing ''1.263A–7T(e) generally'' from the last sentence in paragraph (a)(2)(i) and replacing it with ''1.263A–7''.

**Par. 4.** Section 1.263A–7 is added to read as follows:

**§ 1.263A–7 Changing a method of accounting under section 263A.**

(a) *Introduction*—(1) *Purpose.* These regulations provide guidance to taxpayers changing their methods of accounting for costs subject to section 263A. The principal purpose of these

regulations is to provide guidance regarding how taxpayers are to revalue property on hand at the beginning of the taxable year in which they change their method of accounting for costs subject to section 263A. Paragraph (c) of this section provides guidance regarding how items or costs included in beginning inventory in the year of change must be revalued. Paragraph (d) of this section provides guidance regarding how non-inventory property should be revalued in the year of change.

(2) *Taxpayers that adopt a method of accounting under section 263A.* Taxpayers may adopt a method of accounting for costs subject to section 263A in the first taxable year in which they engage in resale or production activities. For purposes of this section, the adoption of a method of accounting has the same meaning as provided in § 1.446–1(e)(1). Taxpayers are not subject to the provisions of these regulations to the extent they adopt, as opposed to change, a method of accounting.

(3) *Taxpayers that change a method of accounting under section 263A.* Taxpayers changing their method of accounting for costs subject to section 263A are subject to the revaluation and other provisions of this section. Taxpayers subject to these regulations include, but are not limited to—

(i) Resellers of personal property whose average annual gross receipts for the immediately preceding 3-year period (or lesser period if the taxpayer was not in existence for the three preceding taxable years) exceed $10,000,000 where the taxpayer was not subject to section 263A in the prior taxable year;

(ii) Resellers of real or personal property that are using a method that fails to comply with section 263A and desire to change to a method of accounting that complies with section 263A;

(iii) Producers of real or tangible personal property that are using a method that fails to comply with section 263A and desire to change to a method of accounting that complies with section 263A; and

(iv) Resellers and producers that desire to change from one permissible method of accounting for costs subject to section 263A to another permissible method.

(4) *Effective date.* The provisions of this section are effective for taxable years beginning on or after August 5, 1997. For taxable years beginning before August 5, 1997, the rules of § 1.263A–7T contained in the 26 CFR part 1 edition revised as of April 1, 1997, as modified by other administrative guidance, will apply.

(5) *Definition of change in method of accounting.* For purposes of this section, a change in method of accounting has the same meaning as provided in § 1.446–1(e)(2)(ii). Changes in method of accounting for costs subject to section 263A include changes to methods required or permitted by section 263A and the regulations thereunder. Changes in method of accounting may be described in the preceding sentence irrespective of whether the taxpayer's previous method of accounting resulted in the capitalization of more (or fewer) costs than the costs required to be capitalized under section 263A and the regulations thereunder, and irrespective of whether the taxpayer's previous method of accounting was a permissible method under the law in effect when the method was being used. However, changes in method of accounting for costs subject to section 263A do not include changes relating to factors other than those described therein. For example, a change in method of accounting for costs subject to section 263A does not include a change from one inventory identification method to another inventory identification method, such as a change from the last-in, first-out (LIFO) method to the first-in, first-out (FIFO) method, or vice versa, or a change from one inventory valuation method to another inventory valuation method under section 471, such as a change from valuing inventory at cost to valuing the inventory at cost or market, whichever is lower, or vice versa. In addition, a change in method of accounting for costs subject to section 263A does not include a change within the LIFO inventory method, such as a change from the double extension method to the link-chain method, or a change in the method used for determining the number of pools. Further, a change from the modified resale method set forth in Notice 89–67 (1989–1 C.B. 723), see § 601.601(d)(2) of this chapter, to the simplified resale method set forth in § 1.263A–3(d) is not a change in method of accounting within the meaning of § 1.446–1(e)(2)(ii) and is therefore not subject to the provisions of this section. However, a change from the simplified resale method set forth in former § 1.263A–1T(d)(4) to the simplified resale method set forth in § 1.263A–3(d) is a change in method of accounting within the meaning of § 1.446–1(e)(2)(ii) and is subject to the provisions of this section.

(b) *Rules applicable to a change in method of accounting*—

(1) *General rules.* All changes in method of accounting for costs subject to section 263A are subject to the rules and procedures provided by the Code, regulations, and administrative procedures applicable to such changes. The Internal Revenue Service has issued specific revenue procedures that govern certain accounting method changes for costs subject to section 263A. Where a specific revenue procedure is not applicable, changes in method of accounting for costs subject to section 263A are subject to the same rules and procedures that govern other accounting method changes. See Rev. Proc. 97–27 (1997–21 I.R.B. 10) and § 601.601(d)(2) of this chapter.

(2) *Special rules*—(i) *Ordering rules when multiple changes in method of accounting occur in the year of change.*

(A) *In general.* A change in method of accounting for costs subject to section 263A is generally deemed to occur (including the computation of the adjustment under section 481(a)) before any other change in method of accounting is deemed to occur for that same taxable year.

(B) *Exceptions to the general ordering rule*—(*1*) *Change from the LIFO inventory method.* In the case of a taxpayer that is discontinuing its use of the LIFO inventory method in the same taxable year it is changing its method of accounting for costs subject to section 263A, the change from the LIFO method may be made before the change in method of accounting (and the computation of the corresponding adjustment under section 481 (a)) under section 263A is made.

(*2*) *Change from the specific goods LIFO inventory method.* In the case of a taxpayer that is changing from the specific goods LIFO inventory method to the dollar-value LIFO inventory method in the same taxable year it is changing its method of accounting for costs subject to section 263A, the change from the specific goods LIFO inventory method may be made before the change in method of accounting under section 263A is made.

(*3*) *Change in overall method of accounting.* In the case of a taxpayer that is changing its overall method of accounting from the cash receipts and disbursements method to an accrual method in the same taxable year it is changing its method of accounting for costs subject to section 263A, the taxpayer must change to an accrual method for capitalizable costs (see § 1.263A–1(c)(2)(ii)) before the change in method of accounting (and the computation of the corresponding adjustment under section 481(a)) under section 263A is made.

(*4*) *Change in method of accounting for depreciation.* In the case of a

taxpayer that is changing its method of accounting for depreciation in the same taxable year it is changing its method of accounting for costs subject to section 263A and any portion of the depreciation is subject to section 263A, the change in method of accounting for depreciation must be made before the change in method of accounting (and the computation of the corresponding adjustment under section 481(a)) under section 263A is made.

(ii) *Adjustment required by section 481(a).* In the case of any taxpayer required or permitted to change its method of accounting for any taxable year under section 263A and the regulations thereunder, the change will be treated as initiated by the taxpayer for purposes of the adjustment required by section 481(a). The adjustment required by section 481(a) is to be taken into account in computing taxable income over a period not to exceed 4 taxable years.

(iii) *Base year*—(A) *Need for a new base year.* Certain dollar-value LIFO taxpayers (whether using double extension or link-chain) must establish a new base year when they revalue their inventories under section 263A.

(*1*) *Facts and circumstances revaluation method used.* A dollar-value LIFO taxpayer that uses the facts and circumstances revaluation method is permitted, but not required, to establish a new base year.

(*2*) *3-year average method used*—(*i*) *Simplified method not used.* A dollar-value LIFO taxpayer using the 3-year average method but not the simplified production method or the simplified resale method to revalue its inventory is required to establish a new base year.

(*ii*) *Simplified method used.* A dollar-value LIFO taxpayer using the 3-year average method and either the simplified production method or the simplified resale method to revalue its inventory is permitted, but not required, to establish a new base year.

(B) *Computing a new base year.* For purposes of determining future indexes, the year of change becomes the new base year (that is, the index at the beginning of the year of change generally must be 1.00) and all costs are restated in new base year costs for purposes of extending such costs in future years. However, when a new base year is established, costs associated with old layers retain their separate identity within the base year, with such layers being restated in terms of the new base year index. For example, for purposes of determining whether a particular layer has been invaded, each layer must retain its separate identity. Thus, if a decrement in an inventory pool occurs, layers accumulated in more recent years must be viewed as invaded first, in order of priority.

(c) *Inventory*—(1) *Need for adjustments.* When a taxpayer changes its method of accounting for costs subject to section 263A, the taxpayer generally must, in computing its taxable income for the year of change, take into account the adjustments required by section 481(a). The adjustments required by section 481(a) relate to revaluations of inventory property, whether the taxpayer produces the inventory or acquires it for resale. See paragraph (d) of this section in regard to the adjustments required by section 481(a) that relate to non-inventory property.

(2) *Revaluing beginning inventory*—(i) *In general.* If a taxpayer changes its method of accounting for costs subject to section 263A, the taxpayer must revalue the items or costs included in its beginning inventory in the year of change as if the new method (that is, the method to which the taxpayer is changing) had been in effect during all prior years. In revaluing inventory costs under this procedure, all of the capitalization provisions of section 263A and the regulations thereunder apply to all inventory costs accumulated in prior years. The necessity to revalue beginning inventory as if these capitalization rules had been in effect for all prior years includes, for example, the revaluation of costs or layers incurred in taxable years preceding the transition period to the full absorption method of inventory costing as described in § 1.471–11(e), regardless of whether a taxpayer employed a cut-off method under those regulations. The difference between the inventory as originally valued using the former method (that is, the method from which the taxpayer is changing) and the inventory as revalued using the new method is equal to the amount of the adjustment required under section 481(a).

(ii) *Methods to revalue inventory.* There are three methods available to revalue inventory. The first method, the facts and circumstances revaluation method, may be used by all taxpayers. Under this method, a taxpayer determines the direct and indirect costs that must be assigned to each item of inventory based on all the facts and circumstances. This method is described in paragraph (c)(2)(iii) of this section. The second method, the weighted average method, is available only in certain situations to taxpayers using the FIFO inventory method or the specific goods LIFO inventory method. This method is described in paragraph (c)(2)(iv) of this section. The third method, the 3-year average method, is available to all taxpayers using the dollar-value LIFO inventory method of accounting. This method is described in paragraph (c)(2)(v) of this section. The weighted average method and the 3-year average method revalue inventory through processes of estimation and extrapolation, rather than based on the facts and circumstances of a particular year's data. All three methods are available regardless of whether the taxpayer elects to use a simplified method to capitalize costs under section 263A.

(iii) *Facts and circumstances revaluation method—(A) In general.* Under the facts and circumstances revaluation method, a taxpayer generally is required to revalue inventories by applying the capitalization rules of section 263A and the regulations thereunder to the production and resale activities of the taxpayer, with the same degree of specificity as required of inventory manufacturers under the law immediately prior to the effective date of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085, 1986–3 C.B. (Vol. 1)). Thus, for example, with respect to any prior year that is relevant in determining the total amount of the revalued balance as of the beginning of the year of change, the taxpayer must analyze the production and resale data for that particular year and apply the rules and principles of section 263A and the regulations thereunder to determine the appropriate revalued inventory costs. However, under the facts and circumstances revaluation method, a taxpayer may utilize reasonable estimates and procedures in valuing inventory costs if—

(*1*) The taxpayer lacks, and is not able to reconstruct from its books and records, actual financial and accounting data which is required to apply the capitalization rules of section 263A and the regulations thereunder to the relevant facts and circumstances surrounding a particular item of inventory or cost; and

(*2*) The total amounts of costs for which reasonable estimates and procedures are employed are not significant in comparison to the total restated value (including costs previously capitalized under the taxpayer's former method) of the items or costs for the period in question.

(B) *Exception.* A taxpayer that is not able to comply with the requirement of paragraph (c)(2)(iii)(A)(*2*) of this section because of the existence of a significant amount of costs that would require the use of estimates and procedures must

revalue its inventories under the procedures provided in paragraph (c)(2)(iv) or (v) of this section.

(C) *Estimates and procedures allowed.* The estimates and procedures of this paragraph (c)(2)(iii) include—

(*1*) The use of available information from more recent years to estimate the amount and nature of inventory costs applicable to earlier years; and

(*2*) The use of available information with respect to comparable items of inventory produced or acquired during the same year in order to estimate the costs associated with other items of inventory.

(D) *Use by dollar-value LIFO taxpayers.* Generally, a dollar-value LIFO taxpayer must recompute its LIFO inventory for each taxable year that the LIFO inventory method was used.

(E) *Examples.* The provisions of this paragraph (c)(2)(iii) are illustrated by the following three examples. The principles set forth in these examples are applicable both to production and resale activities and the year of change in all three examples is 1997. The examples read as follows:

*Example 1.* Taxpayer X lacks information for the years 1993 and earlier, regarding the amount of costs incurred in transporting finished goods from X's factory to X's warehouse and in storing those goods at the warehouse until their sale to customers. X determines that, for 1994 and subsequent years, these transportation and storage costs constitute 4 percent of the total costs of comparable goods under X's method of accounting for such years. Under this paragraph (c)(2)(iii), X may assume that transportation and storage costs for the years 1993 and earlier constitute 4 percent of the total costs of such goods.

*Example 2.* Assume the same facts as in *Example 1,* except that for the year 1993 and earlier, X used a different method of accounting for inventory costs whereunder significantly fewer costs were capitalized than amounts capitalized in later years. Thus, the application of transportation and storage based on a percentage of costs for 1994 and later years would not constitute a reasonable estimate for use in earlier years. X may use the information from 1994 and later years, if appropriate adjustments are made to reflect the differences in inventory costs for the applicable years, including, for example—

(i) Increasing the percentage of costs that are intended to represent transportation and storage costs to reflect the aggregate differences in capitalized amounts under the two methods of accounting; or

(ii) Taking the absolute dollar amount of transportation and storage costs for comparable goods in inventory and applying that amount (adjusted for changes in general price levels, where appropriate) to goods associated with 1993 and prior periods.

*Example 3.* Taxpayer Z lacks information for certain years with respect to factory administrative costs, subject to capitalization under section 263A and the regulations thereunder, incurred in the production of inventory in factory A. Z does have sufficient information to determine factory administrative costs with respect to production of inventory in factory B, wherein inventory items were produced during the same years as factory A. Z may use the information from factory B to determine the appropriate amount of factory administrative costs to capitalize as inventory costs for comparable items produced in factory A during the same years.

(iv) *Weighted average method*—(A) *In general.* A taxpayer using the FIFO method or the specific goods LIFO method of accounting for inventories may use the weighted average method as provided in this paragraph (c)(2)(iv) to estimate the change in the amount of costs that must be allocated to inventories for prior years. The weighted average method under this paragraph (c)(2)(iv) is only available to a taxpayer that lacks sufficient data to revalue its inventory costs under the facts and circumstances revaluation method provided for in paragraph (c)(2)(iii) of this section. Moreover, a taxpayer that qualifies for the use of the weighted average method under this paragraph (c)(2)(iv) must utilize such method only with respect to items or costs for which it lacks sufficient information to revalue under the facts and circumstances revaluation method. Particular items or costs must be revalued under the facts and circumstances revaluation method if sufficient information exists to make such a revaluation. If a taxpayer lacks sufficient information to otherwise apply the weighted average method under this paragraph (c)(2)(iv) (for example, the taxpayer is unable to revalue the costs of any of its items in inventory due to a lack of information), then the taxpayer must use reasonable estimates and procedures, as described in the facts and circumstances revaluation method, to whatever extent is necessary to allow the taxpayer to apply the weighted average method.

(B) *Weighted average method for FIFO taxpayers—(1) In general.* This paragraph (c)(2)(iv)(B) sets forth the mechanics of the weighted average method as applicable to FIFO taxpayers. Under the weighted average method, an item in ending inventory for which sufficient data is not available for revaluation under section 263A and the regulations thereunder must be revalued by using the weighted average percentage increase or decrease with respect to such item for the earliest subsequent taxable year for which sufficient data is available. With respect to an item for which no subsequent data exists, such item must be revalued by using the weighted average percentage increase or decrease with respect to all reasonably comparable items in the taxpayer's inventory for the same year or the earliest subsequent taxable year for which sufficient data is available.

(*2*) *Example.* The provisions of this paragraph (c)(2)(iv)(B) are illustrated by the following example. The principles set forth in this example are applicable both to production and resale activities and the year of change in the example is 1997. The example reads as follows:

*Example.* Taxpayer A manufactures bolts and uses the FIFO method to identify inventories. Under A's former method, A did not capitalize all of the costs required to be capitalized under section 263A. A maintains inventories of bolts, two types of which it no longer produces. Bolt A was last produced in 1994. The revaluation of the costs of Bolt A under this section for bolts produced in 1994 results in a 20 percent increase of the costs of Bolt A. A portion of the inventory of Bolt A, however, is attributable to 1993. A does not have sufficient data for revaluation of the 1993 cost for Bolt A. With respect to Bolt A, A may apply the 20 percent increase determined for 1994 to the 1993 production as an acceptable estimate. Bolt B was last produced in 1992 and no data exists that would allow revaluation of the inventory cost of Bolt B. The inventories of all other bolts for which information is available are attributable to 1994 and 1995. Revaluation of the costs of these other bolts using available data results in an average increase in inventory costs of 15 percent for 1994 production. With respect to Bolt B, the overall 15 percent increase for A's inventory for 1994 may be used in revaluing the cost of Bolt B.

(C) *Weighted average method for specific goods LIFO taxpayers—(1) In general.* This paragraph (c)(2)(iv)(C) sets forth the mechanics of the weighted average method as applicable to LIFO taxpayers using the specific goods method of valuing inventories. Under the weighted average method, the inventory layers with respect to an item for which data is available are revalued under this section and the increase or decrease in amount for each layer is expressed as a percentage of change from the cost in the layer as originally valued. A weighted average of the percentage of change for all layers for each type of good is computed and applied to all earlier layers for each type of good that lack sufficient data to allow for revaluation. In the case of earlier layers for which sufficient data exists, such layers are to be revalued using actual data. In cases where sufficient data is not available to make a weighted average estimate with respect to a particular item of inventory, a weighted average increase or decrease is to be determined using all other inventory items revalued by the taxpayer in the

same specific goods grouping. This percentage increase or decrease is then used to revalue the cost of the item for which data is lacking. If the taxpayer lacks sufficient data to revalue any of the inventory items contained in a specific goods grouping, then the weighted average increase or decrease of substantially similar items (as determined by principles similar to the rules applicable to dollar-value LIFO taxpayers in § 1.472–8(b)(3)) must be applied in the revaluation of the items in such grouping. If insufficient data exists with respect to all the items in a specific goods grouping and to all items that are substantially similar (or such items do not exist), then the weighted average for all revalued items in the taxpayer's inventory must be applied in revaluing items for which data is lacking.

(*2*) *Example.* The provisions of this paragraph (c)(2)(iv)(C) are illustrated by the following example. The principles set forth in this example are applicable both to production and resale activities and the year of change in the example is 1997. The example reads as follows:

*Example.* (i) Taxpayer M is a manufacturer that produces two different parts. Under M's former method, M did not capitalize all of the costs required to be capitalized under section 263A. Work-in-process inventory is recorded in terms of equivalent units of finished goods. M's records show the following at the end of 1996 under the specific goods LIFO inventory method:

| LIFO Product and layer | Number | Cost | Carrying values |
|---|---|---|---|
| Product #1: | | | |
| 1993 | 150 | $5.00 | $750 |
| 1994 | 100 | 6.00 | 600 |
| 1995 | 100 | 6.50 | 650 |
| 1996 | 50 | 7.00 | 350 |
| | | | $2,350 |
| Product #2: | | | |
| 1993 | 200 | $4.00 | $800 |
| 1994 | 200 | 4.50 | 900 |
| 1995 | 100 | 5.00 | 500 |
| 1996 | 100 | 6.00 | 600 |
| | | | 2,800 |
| Total carrying value of Products #1 and #2 under M's former method | | | 5,150 |

(ii) M has sufficient data to revalue the unit costs of Product #1 using its new method for 1994, 1995 and 1996. These costs are: $7.00 in 1994, $7.75 in 1995, and $9.00 in 1996. This data for Product #1 results in a weighted average percentage change of 20.31 percent ((100×($7.00 − $6.00))+(100×($7.75 − $6.50))+(50×($9.00 − $7.00)) divided by (100×$6.00) + (100×$6.50) + (50×$7.00)]. M has sufficient data to revalue the unit costs of Product #2 only in 1995 and 1996. These costs are: $6.00 in 1995 and $7.00 in 1996. This data for Product #2 results in a weighted average percentage change of 18.18 percent [(100×($6.00 − $5.00))+(100×($7.00 − $6.00)) divided by (100×$5.00)+(100×$6.00)].

(iii) M can estimate its revalued costs for Product #1 for 1993 by applying the weighted average increase computed for Product #1 (20.31 percent) to the unit costs originally carried on M's records for 1993 under M's former method. The estimated revalued unit cost of Product #1 would be $6.02 ($5.00×1.2031). M estimates its revalued costs for Product #2 for 1993 and 1994 in a similar fashion. M applies the weighted average increase determined for Product #2 (18.18 percent) to the unit costs of $4.00 and $4.50 for 1993 and 1994 respectively. The revalued unit costs of Product #2 are $4.73 for 1993 ($4.00×1.1818) and $5.32 for 1994 ($4.50×1.1818).

(iv) M's inventory would be revalued as follows:

| LIFO product and layer | Number | Cost | Carrying values |
|---|---|---|---|
| Product #1: | | | |
| 1993 | 150 | $6.02 | $903 |
| 1994 | 100 | 7.00 | 700 |
| 1995 | 100 | 7.75 | 775 |
| 1996 | 50 | 9.00 | 450 |
| | | | $2,828 |
| Product #2: | | | |
| 1993 | 200 | 4.73 | 946 |
| 1994 | 200 | 5.32 | 1,064 |
| 1995 | 100 | 6.00 | 600 |
| 1996 | 100 | 7.00 | 700 |
| | | | 3,310 |
| Total value of Products #1 and #2 as revalued under M's new method | | | 6,138 |
| Total amount of adjustment required under section 481(a) [$6,138 − $5,150] | | | 988 |

(D) *Adjustments to inventory costs from prior years.* For special rules applicable when a revaluation using the weighted average method includes costs not incurred in prior years, see paragraph (c)(2)(v)(E) of this section.

(v) *3-year average method*—(A) *In general.* A taxpayer using the dollar-value LIFO method of accounting for inventories may revalue all existing LIFO layers of a trade or business based on the 3-year average method as

provided in this paragraph (c)(2)(v). The 3-year average method is based on the average percentage change (the 3-year revaluation factor) in the current costs of inventory for each LIFO pool based on the three most recent taxable years for which the taxpayer has sufficient information (typically, the three most recent taxable years of such trade or business). The 3-year revaluation factor is applied to all layers for each pool in beginning inventory in the year of change. The 3-year average method is available to any dollar-value taxpayer that complies with the requirements of this paragraph (c)(2)(v) regardless of whether such taxpayer lacks sufficient data to revalue its inventory costs under the facts and circumstances revaluation method prescribed in paragraph (c)(2)(iii) of this section. The 3-year average method must be applied with respect to all inventory in a taxpayer's trade or business. A taxpayer is not permitted to apply the method for the revaluation of some, but not all, inventory costs on the basis of pools, business units, or other measures of inventory amounts that do not constitute a separate trade or business. Generally, a taxpayer revaluing its inventory using the 3-year average method must establish a new base year. See, paragraph (b)(2)(iii)(A)(*2*)(*i*) of this section. However, a dollar-value LIFO taxpayer using the 3-year average method and either the simplified production method or the simplified resale method to revalue its inventory is permitted, but not required, to establish a new base year. See, paragraph (b)(2)(iii)(A)(*2*)(*ii*) of this section. If a taxpayer lacks sufficient information to otherwise apply the 3-year average method under this paragraph (c)(2)(v) (for example, the taxpayer is unable to revalue the costs of any of its LIFO pools for three years due to a lack of information), then the taxpayer must use reasonable estimates and procedures, as described in the facts and circumstances revaluation method under paragraph (c)(2)(iii) of this section, to whatever extent is necessary to allow the taxpayer to apply the 3-year average method.

(B) *Consecutive year requirement.* Under the 3-year average method, if sufficient data is available to calculate the revaluation factor for more than three years, the taxpayer may use data from such additional years in determining the average percentage increase or decrease only if the additional years are consecutive to and prior to the year of change. The requirement under the preceding sentence to use consecutive years is applicable under this method regardless of whether any inventory costs in beginning inventory as of the year of change are viewed as incurred in, or attributable to, those consecutive years under the LIFO inventory method. Thus, the requirement to use data from consecutive years may result in using information from a year in which no LIFO increment occurred. For example, if a taxpayer is changing its method of accounting in 1997 and has sufficient data to revalue its inventory for the years 1991 through 1996, the taxpayer may calculate the revaluation factor using all six years. If, however, the taxpayer has sufficient data to revalue its inventory for the years 1990 through 1992, and 1994 through 1996, only the three years consecutive to the year of change, that is, 1994 through 1996, may be used in determining the revaluation factor. Similarly, for example, a taxpayer with LIFO increments in 1995, 1993, and 1992 may not calculate the revaluation factor based on the data from those years alone, but instead must use the data from consecutive years for which the taxpayer has information.

(C) *Example.* The provisions of this paragraph (c)(2)(v) are illustrated by the following example. The principles set forth in this example are applicable both to production and resale activities and the year of change in the example is 1997. The example reads as follows:

*Example.* (i) Taxpayer G, a calendar year taxpayer, is a reseller that is required to change its method of accounting under section 263A. G will not use either the simplified production method or the simplified resale method. G adopted the dollar-value LIFO inventory method in 1991, using a single pool and the double extension method. G's beginning LIFO inventory as of January 1, 1997, computed using its former method, for the year of change is as follows:

| | Base year costs | Index | LIFO carrying value |
|---|---|---|---|
| Base layer | $14,000 | 1.00 | $14,000 |
| 1991 layer | 4,000 | 1.20 | 4,800 |
| 1992 layer | 5,000 | 1.30 | 6,500 |
| 1993 layer | 2,000 | 1.35 | 2,700 |
| 1994 layer | 0 | 1.40 | 0 |
| 1995 layer | 4,000 | 1.50 | 6,000 |
| 1996 layer | 5,000 | 1.60 | 8,000 |
| Total | 34,000 | | 42,000 |

(ii) G is able to recompute total inventoriable costs incurred under its new method for the three preceding taxable years as follows:

| | Current cost as recorded (former method) | Current cost as adjusted (new method) | Percentage change |
|---|---|---|---|
| 1994 | $35,000 | $45,150 | .29 |
| 1995 | 43,500 | 54,375 | .25 |
| 1996 | 54,400 | 70,720 | .30 |
| Total | 132,900 | 170,245 | .28 |

(iii) Applying the average revaluation factor of .28 to each layer, G's inventory is restated as follows:

| | Restated base year costs | Index | Restated LIFO carrying value |
|---|---|---|---|
| Base layer | $17,920 | 1.00 | $17,920 |

| | Restated base year costs | Index | Restated LIFO carrying value |
|---|---|---|---|
| 1991 layer | 5,120 | 1.20 | 6,144 |
| 1992 layer | 6,400 | 1.30 | 8,320 |
| 1993 layer | 2,560 | 1.35 | 3,456 |
| 1994 layer | 0 | 1.40 | 0 |
| 1995 layer | 5,120 | 1.50 | 7,680 |
| 1996 layer | 6,400 | 1.60 | 10,240 |
| Total | 43,520 | ..... | 53,760 |

(iv) The adjustment required by section 481(a) is $11,760. This amount may be computed by multiplying the average percentage of .28 by the LIFO carrying value of G's inventory valued using its former method ($42,000). Alternatively, the adjustment required by section 481(a) may be computed by the difference between—

(*A*) The revalued costs of the taxpayer's inventory under its new method ($53,760), and

(*B*) The costs of the taxpayer's inventory using its former method ($42,000).

(v) In addition, the inventory as of the first day of the year of change (January 1, 1997) becomes the new base year cost for purposes of determining the LIFO index in future years. See, paragraphs (b)(2)(iii)(A)(*2*)(*i*) and (b)(2)(iii)(B) of this section. This requires that layers in years prior to the base year be restated in terms of the new base year index. The current year cost of G's inventory, as adjusted, is $70,720. Such cost must be apportioned to each layer in proportion to the restated base year cost of that layer to total restated base year costs ($43,520), as follows:

| | Restated base year costs | Restated index | Restated LIFO carrying value |
|---|---|---|---|
| Old base layer | $29,120 | .615 | $17,920 |
| 1991 layer | 8,320 | .738 | 6,144 |
| 1992 layer | 10,400 | .80 | 8,320 |
| 1993 layer | 4,160 | .831 | 3,456 |
| 1994 layer | 0 | ..... | 0 |
| 1995 layer | 8,320 | .923 | 7,680 |
| 1996 layer | 10,400 | .985 | 10,240 |
| Total | 70,720 | ..... | 53,760 |

(D) *Short taxable years.* A short taxable year is treated as a full 12 months.

(E) *Adjustments to inventory costs from prior years—*(*1*) *General rule—*(*i*) The use of the revaluation factor, based on current costs, to estimate the revaluation of prior inventory layers under the 3-year average method, as described in paragraph (c)(2)(v) of this section, may result in an allocation of costs that include amounts attributable to costs not incurred during the year in which the layer arose. To the extent a taxpayer can demonstrate that costs that contributed to the determination of the revaluation factor could not have affected a prior year, the revaluation factor as applied to that year may be adjusted under the restatement adjustment procedure, as described in paragraph (c)(2)(v)(F) of this section. The determination that a cost could not have affected a prior year must be made by a taxpayer only upon showing that the type of cost incurred during the years used to calculate the revaluation factor (revaluation years) was not present during such prior year. An item of cost will not be eligible for the restatement adjustment procedure simply because the cost varies in amount from year to year or the same type of cost is described or referred to by a different name from year to year. Thus, the restatement adjustment procedure allowed under paragraph (c)(2)(v)(F) of this section is not available in a prior year with respect to a particular cost if the same type of cost was incurred both in the revaluation years and in such prior year, although the amount of such cost and the name or description thereof may vary.

(*ii*) The provisions of this paragraph (c)(2)(v)(E) are also applicable to taxpayers using the weighted average method in revaluing inventories under paragraph (c)(2)(iv) of this section. Thus, to the extent a taxpayer can demonstrate that costs that contributed to the determination of the restatement of a particular year or item could not have affected a prior year or item, the taxpayer may adjust the revaluation of that prior year or item accordingly under the weighted average method. All the requirements and definitions, however, applicable to the restatement adjustment procedure under this paragraph (c)(2)(v)(E) fully apply to a taxpayer using the weighted average method to revalue inventories.

(*2*) *Examples of costs eligible for restatement adjustment procedure.* The provisions of this paragraph (c)(2)(v)(E) are illustrated by the following four examples. The principles set forth in these examples are applicable both to production and resale activities and the year of change in the four examples is 1997. The examples read as follows:

*Example 1.* Taxpayer A is a reseller that introduced a defined benefit pension plan in 1994, and made the plan available to personnel whose labor costs were (directly or indirectly) properly allocable to resale activities. A determines the revaluation factor based on data available for the years 1994 through 1996, for which the pension plan was in existence. Based on these facts, the costs of the pension plan in the revaluation years are eligible for the restatement adjustment procedure for years prior to 1994.

*Example 2.* Assume the same facts as in *Example 1*, except that a defined contribution plan was available, during prior years, to personnel whose labor costs were properly allocable to resale activities. The defined contribution plan was terminated before the introduction of the defined benefit plan in 1994. Based on these facts, the costs of the defined benefit pension plan in the revaluation years are not eligible for the restatement adjustment procedure with respect to years for which the defined contribution plan existed.

*Example 3.* Taxpayer C is a manufacturer that established a security department in 1995 to patrol and safeguard its production and warehouse areas used in C's trade or business. Prior to 1995, C had not been required to utilize security personnel in its trade or business; C established the security department in 1995 in response to increasing vandalism and theft at its plant locations. Based on these facts, the costs of the security

department are eligible for the restatement adjustment procedure for years prior to 1995.

*Example 4.* Taxpayer D is a reseller that established a payroll department in 1995 to process the company's weekly payroll. In the years 1991 through 1994, D engaged the services of an outside vendor to process the company's payroll. Prior to 1991, D's payroll processing was done by D's accounting department, which was responsible for payroll processing as well as for other accounting functions. Based on these facts, the costs of the payroll department are not eligible for the restatement adjustment procedure. D was incurring the same type of costs in earlier years as D was incurring in the payroll department in 1995 and subsequent years, although these costs were designated by a different name or description.

(F) *Restatement adjustment procedure*—(*1*) *In general*—(*i*) This paragraph (c)(2)(v)(F) provides a restatement adjustment procedure whereunder a taxpayer may adjust the restatement of inventory costs in prior taxable years in order to produce a different restated value than the value that would otherwise occur through application of the revaluation factor to such prior taxable years.

(*ii*) Under the restatement adjustment procedure as applied to a particular prior year, a taxpayer must determine the particular items of cost that are eligible for the restatement adjustment with respect to such prior year. The taxpayer must then recompute, using reasonable estimates and procedures, the total inventoriable costs that would have been incurred for each revaluation year under the taxpayer's former method and the taxpayer's new method by making appropriate adjustments in the data for such revaluation year to reflect the particular costs eligible for adjustment.

(*iii*) The taxpayer must then compute the total percentage change with respect to each revaluation year, using the revised estimates of total inventoriable costs for such year as described in paragraph (c)(2)(v)(F)(*1*)(*ii*) of this section. The percentage change must be determined by calculating the ratio of the revised total of the inventoriable costs for such revaluation year under the taxpayer's new method to the revised total of the inventoriable costs for such revaluation year under the taxpayer's former method.

(*iv*) An average of the resulting percentage change for all revaluation years is then calculated, and the resulting average is applied to the prior year in issue.

(*2*) *Examples of restatement adjustment procedure.* The provisions of this paragraph (c)(2)(v)(F) are illustrated by the following two examples. The principles set forth in these examples are applicable both to production and resale activities and the year of change in the two examples is 1997. The examples read as follows:

*Example 1.* Taxpayer A is a reseller that is eligible to make a restatement adjustment by reason of the costs of a defined benefit pension plan that was introduced in 1994, during the revaluation period. The revaluation factor, before adjustment of data to reflect the pension costs, is as provided in the example in paragraph (c)(2)(v)(C) of this section. Thus, for example, with respect to the year 1994, the total inventoriable costs under A's former method is $35,000, the total inventoriable costs under A's new method is $45,150, and the percentage change is .29. Under the method of accounting used by A during 1994 (the former method), none of the pension costs were included as inventoriable costs. Thus, under the restatement adjustment procedure, the total inventoriable cost under A's former method would remain at $35,000 if the pension plan had not been in existence. Similarly, A determines that the total inventoriable costs for 1994 under A's new method, if the pension plan had not been in existence, would have been $42,000. The restatement adjustment for 1994 determined under this paragraph (c)(2)(v)(F) would then be equal to .20 ([$42,000–$35,000]/$35,000). A would make similar calculations with respect to 1995 and 1996. The average of such amounts for each of the three years in the revaluation period would then be determined as in the example in paragraph (c)(2)(v)(C) of this section. Such average would be used to revalue cost layers for years for which the pension plan was not in existence. Such revalued layers would then be viewed as restated in compliance with the requirements of this paragraph. With respect to cost layers incurred during years for which the pension plan was in existence, no adjustment of the revaluation factor would occur.

*Example 2.* Assume the same facts as in *Example 1,* except that a portion of the pension costs were included as inventoriable costs under the method used by A during 1994 (the former method). Under the restatement adjustment procedure, A determines that the total inventoriable costs for 1994 under the former method, if the pension plan had not been in existence, would have been $34,000. Similarly, A determines that the total inventoriable costs for 1994 under A's new method, if the pension plan had not been in existence, would have been $42,000. The restatement adjustment for 1994 determined under this paragraph (c)(2)(v)(F) would then be equal to .24 ([$42,000–$34,000]/$34,000). A would make similar calculations with respect to 1995 and 1996. The average of such amounts for each of the three years in the revaluation period would then be determined as in the example in paragraph (c)(2)(v)(C) of this section. Such average would be used to revalue cost layers for years for which the pension plan was not in existence.

(3) *Intercompany items*—(i) *Revaluing intercompany transactions.* Pursuant to any change in method of accounting for costs subject to section 263A, taxpayers are required to revalue the amount of any intercompany item resulting from the sale or exchange of inventory property in an intercompany transaction to an amount equal to the intercompany item that would have resulted, had the cost of goods sold for that inventory property been determined under the taxpayer's new method. The requirement of the preceding sentence applies with respect to both inventory produced by a taxpayer and inventory acquired by the taxpayer for resale. In addition, the requirements of this paragraph (c)(3) apply only to any intercompany item of the taxpayer as of the beginning of the year of change in method of accounting. See § 1.1502–13(b)(2)(ii). A taxpayer must revalue the amount of any intercompany item only if the inventory property sold in the intercompany transaction is held as inventory by a buying member as of the date the taxpayer changes its method of accounting under section 263A. Corresponding changes to the adjustment required under section 481(a) must be made with respect to any adjustment of the intercompany item required under this paragraph (c)(3). Moreover, the requirements of this paragraph (c)(3) apply regardless of whether the taxpayer has any items in beginning inventory as of the year of change in method of accounting. See § 1.1502–13 for the definition of intercompany transaction.

(ii) *Example.* The provisions of this paragraph (c)(3) are illustrated by the following example. The principles set forth in this example are applicable both to production and resale activities and the year of change in the example is 1997. The example reads as follows:

*Example.* (i) Assume that S, a member of a consolidated group filing its federal income tax return on a calendar year, manufactures and sells inventory property to B, a member of the same consolidated group, in 1996. The sale between S and B is an intercompany transaction as defined under § 1.1502–13(b)(1). The gain from the intercompany transaction is an intercompany item to S under § 1.1502–13(b)(2). As of the beginning of the year of change in method of accounting (January 1, 1997), the inventory property is still held by B based on the particular inventory method of accounting used by B for federal income tax purposes (for example, the LIFO or FIFO inventory method). The property was sold by S to B in 1996 for $150; the cost of goods sold with respect to the property under the method in effect at the time the inventory was produced was $100, resulting in an intercompany item of $50 to S under § 1.1502–13. As of January 1, 1997, S still has an intercompany item of $50.

(ii) S is required to revalue the amount of its intercompany item to an amount equal to what the intercompany item would have

been had the cost of goods sold for that inventory property been determined under S's new method. Assume that the cost of the inventory under this method would have been $110, had the method applied to S's manufacture of the property in 1996. Thus, S is required to revalue the amount of its intercompany item to $40 (that is, $150 less $110), necessitating a negative adjustment to the intercompany item of $10. Moreover, S is required to increase its adjustment under section 481(a) by $10 in order to prevent the omission of such amount by virtue of the decrease in the intercompany item.

(iii) *Availability of revaluation methods.* In revaluing the amount of any intercompany item resulting from the sale or exchange of inventory property in an intercompany transaction to an amount equal to the intercompany item that would have resulted had the cost of goods sold for that inventory property been determined under the taxpayer's new method, a taxpayer may use the other methods and procedures otherwise properly available to that particular taxpayer in revaluing inventory under section 263A and the regulations thereunder, including, if appropriate, the various simplified methods provided in section 263A and the regulations thereunder and the various procedures described in this paragraph (c).

(4) *Anti-abuse rule*—(i) *In general.* Section 263A(i)(1) provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 263A, including regulations to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of section 263A and the regulations thereunder. One way in which the application of section 263A and the regulations thereunder would be otherwise avoided is through the use of entities described in the preceding sentence in such a manner as to effectively avoid the necessity to restate beginning inventory balances under the change in method of accounting required or permitted under section 263A and the regulations thereunder.

(ii) *Deemed avoidance of this section*—(A) *Scope.* For purposes of this paragraph (c), the avoidance of the application of section 263A and the regulations thereunder will be deemed to occur if a taxpayer using the LIFO method of accounting for inventories, transfers inventory property to a related corporation in a transaction described in section 351, and such transfer occurs:

(*1*) On or before the beginning of the transferor's taxable year beginning in 1987; and

(*2*) After September 18, 1986.

(B) *General rule.* Any transaction described in paragraph (c)(4)(ii)(A) of this section will be treated in the following manner:

(*1*) Notwithstanding any provision to the contrary (for example, section 381), the transferee corporation is required to revalue the inventories acquired from the transferor under the provisions of this paragraph (c) relating to the change in method of accounting and the adjustment required by section 481(a), as if the inventories had never been transferred and were still in the hands of the transferor; and

(*2*) Absent an election as described in paragraph (c)(4)(iii) of this section, the transferee must account for the inventories acquired from the transferor by treating such inventories as if they were contained in the transferee's LIFO layer(s).

(iii) *Election to use transferor's LIFO layers.* If a transferee described in paragraph (c)(4)(ii) of this section so elects, the transferee may account for the inventories acquired from the transferor by allocating such inventories to LIFO layers corresponding to the layers to which such properties were properly allocated by the transferor, prior to their transfer. The transferee must account for such inventories for all subsequent periods with reference to such layers to which the LIFO costs were allocated. Any such election is to be made on a statement attached to the timely filed federal income tax return of the transferee for the first taxable year for which section 263A and the regulations thereunder applies to the transferee.

(iv) *Tax avoidance intent not required.* The provisions of paragraph (c)(4)(ii) of this section will apply to any transaction described therein, without regard to whether such transaction was consummated with an intention to avoid federal income taxes.

(v) *Related corporation.* For purposes of this paragraph (c)(4), a taxpayer is related to a corporation if—

(A) the relationship between such persons is described in section 267(b)(1), or

(B) such persons are engaged in trades or businesses under common control (within the meaning of paragraphs (a) and (b) of section 52).

(d) *Non-inventory property*—(1) *Need for adjustments.* A taxpayer that changes its method of accounting for costs subject to section 263A with respect to non-inventory property must revalue the non-inventory property on hand at the beginning of the year of change as set forth in paragraph (d)(2) of this section, and compute an adjustment under section 481(a). The adjustment under section 481(a) will equal the difference between the adjusted basis of the property as revalued using the taxpayer's new method and the adjusted basis of the property as originally valued using the taxpayer's former method.

(2) *Revaluing property.* A taxpayer must revalue its non-inventory property as of the beginning of the year of change in method of accounting. The facts and circumstances revaluation method of paragraph (c)(2)(iii) of this section must be used to revalue this property. In revaluing non-inventory property, however, the only additional section 263A costs that must be taken into account are those additional section 263A costs incurred after the later of December 31, 1986, or the date the taxpayer first becomes subject to section 263A, in taxable years ending after that date. See § 1.263A–1(d)(3) for the definition of additional section 263A costs.

**§ 1.263A–7T [Removed]**

**Par. 5.** Section 1.263A–7T is removed.

**§ 1.263A–15 [Amended]**

**Par. 6.** Section 1.263A–15 is amended by removing ''1.263A–7T (e) generally'' from the last sentence in paragraph (a)(1) and replacing it with ''1.263A–7''.

Dated: July 28, 1997.

**Michael P. Dolan,**

*Acting Commissioner of Internal Revenue.*

**Donald C. Lubick,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 97–20530 Filed 8–4–97; 8:45 am]

BILLING CODE 4830–01–U

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Parts 210 and 218

**RIN 1010–AC38**

## Designation of Payor Recordkeeping

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Interim final rulemaking.

**SUMMARY:** The Minerals Management Service (MMS) Royalty Management Program (RMP) is amending its regulations to authorize the collection of information from lessees and payors concerning designations by lessees of other persons to make royalty and other payments on their behalf.

**DATES:** This rule is effective August 5, 1997. Comments regarding this interim final rulemaking and the information collection must be received on or before October 6, 1997.

**ADDRESSES:** Comments should be sent to: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management

Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier delivery to Building 85, Denver Federal Center, Denver, Colorado 80225; or e-Mail David—Guzy@mms.gov.

**FOR FURTHER INFORMATION CONTACT:** David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, telephone (303) 231–3432, Fax (303) 231–3385, e-Mail David__Guzy@mms.gov.

**SUPPLEMENTARY INFORMATION:** The principal authors of this rulemaking are Kenneth R. Vogel, of the Minerals Management Service Office of Enforcement and Sarah Inderbitzin of the Department of the Interior Office of the Solicitor.

## I. General

On August 13, 1996, Congress enacted the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, Pub. L. 104–185, as corrected by Pub. L. 104–200 (RSFA). RSFA amends portions of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.*, to provide that an owner of operating rights in a Federal oil and gas lease onshore or on the Outer Continental Shelf (OCS) is primarily liable for royalty payments owed on its portion of its lease, and that the owners of record title for such lease are secondarily liable, 30 U.S.C. 1712(a). It also allows lessees, which include both operating rights and record title owners, 30 U.S.C. 1701(7), to designate another person to pay royalties on their behalf by written notice to MMS, 30 U.S.C. 1712(a). Finally, it provides that the persons so designated are not liable for any payment obligations under such leases. Id. This rule provides a mechanism to make the match between lessees and the persons they designate to make royalty and other payments on their behalf consistent with RSFA and existing royalty collection practices.

Prior to the enactment of RSFA, MMS would allow any person to report and pay royalties and other payments on a Federal oil and gas lease onshore or on the OCS simply by declaring itself a ''payor'' for the lease and filing a Form MMS–4025, Payor Information Form (PIF) (OMB 1010–0033). 30 CFR 210.10(c)(3). MMS's Auditing and Financial System (AFS) requires that a royalty payor file a PIF for oil and gas or Form MMS–4030, Solid Minerals Payor Information Form, and be assigned a payor code before the system will accept the monthly Form MMS–2014, Report of Sales and Royalty Remittance. See the MMS ''Oil and Gas Payor Handbook,'' Volume 1, at Chapter 2; and the MMS ''Solid Minerals Payor Handbook'' at Chapter 2.

A key to this reporting system is the MMS Accounting Identification Number (AID). The AID is a 13-digit number in two parts. The first 10 digits are an MMS assigned lease number, which is converted from the Bureau of Land Management (BLM) or MMS Offshore Minerals Management (OMM) lease number. It consists of a three-digit prefix, a six-digit body, and a one or 2-digit suffix. The last three digits of the AID are the MMS assigned revenue source number. A revenue source generally is one of the following as specified in MMS's Oil and Gas Payor Handbook:

- Lease production—one or more wells on the lease where the lease is not committed to a unit or communitization agreement (CA);
- Unitized production allocation—the participating area (PA) of a unit under which a lease receives production allocation, or a secondary recovery unit;
- Communitized production allocation—the CA under which a lease receives a production allocation; or
- Compensatory royalty—a compensatory royalty assessment or agreement.

These distinctions are not readily discoverable from the legal descriptions contained in lease assignments and other legal documents.

Currently, when MMS determines either through its automated compliance procedures or an audit that royalties are underpaid, MMS will bill or order payment from the payor for the deficiency. The payor is billed because that is the person for whom MMS has information in its system regarding that production; RMP does not maintain data on the record title owner(s) or operating rights owner(s) for which the payor is making payments. Therefore, while other persons may be liable for some or all of the royalty deficiency (such as the record title owner or an operating rights owner), MMS has historically considered that the person who filed the PIF would be liable for underpaid royalties.

In *Mesa Operating Limited Partnership*, 125 IBLA 28(1992) (Modified on Reconsideration), 128 IBLA 174 (1994), Mesa filed PIFs and paid MMS royalties on production it purchased from several Indian oil and gas leases. Mesa did not own any interest in those leases. MMS ordered Mesa to pay additional royalties found to be owed on those leases. Mesa administratively appealed MMS's order and the Interior Board of Land Appeals held that a payor does not become liable simply by filing a PIF with the MMS, but rather some other evidence of assignment of liability must be presented. Although IBLA found Mesa liable for other reasons, thereafter MMS published a **Federal Register** notice of proposed rulemaking titled ''Amendments of Regulations to Establish Liability for Royalty Due on Federal and Indian Leases, and to Establish Responsibility to Pay and Report Royalty and Other Payments (60 FR 30492, 06/09/97). In that rulemaking, MMS proposed to make payors, owners of working interests and lessees of record, among others, all potentially liable for unpaid or underpaid royalties and other payments.

RSFA resolved statutorily which parties are liable for royalty and other payments on Federal oil and gas leases onshore and on the OCS for production after September 1, 1996. Under RSFA, the person owning operating rights in a lease is primarily liable for its pro rata share of payment obligations under a lease, and the person owning record title is secondarily liable for its pro rata share of payment obligations under the lease. 30 U.S.C. 1712(a). RSFA also provides that the lessee may designate a person (Designee) to make all or part of the payments due under a lease on the lessee's behalf. *Id*. Under RSFA, lessees must notify MMS (or a delegated State, if applicable) in writing of such designation. *Id*. The Designee may then make payments, file reports, offset and credit monies, make adjustments to reports and request and receive refunds, all in its own name on the lessee's behalf. However, RSFA mandates that the Designee is not liable for the obligations of the lessee for which it is paying and reporting. *Id*.

RSFA is applicable to all royalties and other payments due on production from Federal oil and gas leases after September 1, 1996. Thus, for royalty payments made for September 1996, which were due by the end of October 1996, RSFA required all lessees either to pay on their own behalf or to designate another person to make payments on their behalf.

As stated above, MMS does not maintain information on the lessee for which a payor is paying royalties or other payments. Although BLM is responsible for maintaining record title and operating rights ownership records for Federal oil and gas leases onshore, and MMS has the same responsibility for such leases on the OCS, neither BLM nor MMS Offshore have information matching lessees to their payors. Accordingly, in an attempt to decide how to best collect payment responsibility information to implement

RSFA, MMS met with the representatives of several oil and gas trade associations and several States that share in oil and gas royalties under the Mineral Leasing Act of 1920, 30 U.S.C. 191, and the Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1339. In those meetings, the participants generally agreed that many lessees would not be able to tell MMS how they may have assigned royalty payment responsibility for each portion of their lease in terms that are readily translatable into the MMS accounting system. Therefore, lessees will require assistance from MMS to comply with RSFA's mandate that they designate a payor. The participants, many of whom were royalty payors as well as lessees, recommended that MMS get an initial listing of supposed Designees, by inquiring of the current payors whether they were paying on their own behalf (as lessee) or on behalf of someone else. The participants generally agreed that MMS should then send a notification to all lessees, listing the leases they owned by AID, and the person or persons who were paying on each lease on the lessee's behalf, for each product on the lease for which the person was paying, when that was appropriate. Lessees would then use that list to designate the person(s) responsible for making lease payments on the lessee's behalf.

The term payor includes both Designees, who are reporting and paying royalties on behalf of lessees other than themselves, and lessees who are reporting and paying their own royalty. In many cases, a payor may be both a lessee and a Designee on the same lease. In fact, they may (and commonly do) report both their own payment and the payments of lessees who (will) designate them on the same royalty line. If that line is either underpaid or paid late, MMS will send a demand to the payor, and for production subject to RSFA, MMS will send a notice to those lessees who have designated the payor to pay for them with respect to that line. This rule gives MMS the authority to collect the information necessary to match a lessee to that underpaid (or untimely paid) royalty line.

Since enactment of RSFA, MMS designed a database that will allow it to match lessees with their Designees. To gather the initial information matching payors to lessees, on January 9, 1997, MMS sent a letter to approximately 2,500 oil and gas payors. Attached to that letter was a listing of all leases for which MMS data showed that the payor was reporting and making payments to MMS. The payors were requested to voluntarily fill in missing information, listing the lessees for which they were reporting, and making payments to MMS by AID and product code, if appropriate. The January 9, 1997, letter was not in accordance with the Paperwork Reduction Act (PRA), 44 U.S.C. 3512, because, due to an unintentional oversight, MMS did not properly send the Information Collection Request (ICR) to the Office of Management and Budget (OMB) for its review, as the PRA mandates. MMS apologizes for that oversight.

The purpose of this rule is to make MMS's requests to payors for information missing in its database mandatory, because, as stated above, neither MMS, BLM, nor most lessees have the information necessary to make the match between lessees and their payors. For this reason, MMS will request data from time to time from those parties who are payors in MMS's accounting system, and MMS will use that data to send reports to lessees for their confirmation of the designation of payment responsibility to the payor. Payors who voluntarily responded to the January 9, 1997, letter requesting similar information do not need to provide the same information under the rule that would duplicate information already provided. However, the rule does provide MMS with authority to request clarification of information submitted in response to the January 9, 1997, letter or the rule. Because the information MMS requests is critical to implementation of RSFA, and because RSFA's provisions relevant to this information collection became effective September 1, 1996, MMS is requesting that OMB authorize emergency processing and approval of this ICR. This ICR and any requests in the future will be mandatory under the provisions of this regulation.

Respondents may respond to the information requests required under this rule electronically or in writing. MMS prefers that respondents respond electronically. MMS has created a Comma Separated Value (CSV) file structure, which is available as an output type in most spreadsheet and data base applications. MMS will offer respondents a lease listing in computer readable form (electronically) and also will offer the telephone assistance of our computer specialists.

## III. Indian Lands and Non-Oil and Gas Leases

RSFA is not applicable to Indian leases and leases of minerals other than oil and gas. MMS does not currently need data in order to match lessees and payors for such leases. However, MMS may need the information for those leases in the future. Therefore, this rule also gives MMS the authority to collect the data necessary to match the lessee with the payor for each AID for Indian leases and leases of minerals other than oil and gas.

## IV. Administrative Procedure Act

MMS has determined that the notice and comment that the Administrative Procedure Act (APA), 5 U.S.C. 553(b), ordinarily mandates, are not required in this interim final rulemaking. APA authorizes agencies to waive notice and comment procedures when the agency ''for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). MMS for good cause finds that notice and comment procedures for this rulemaking are impracticable and contrary to the public interest because they would delay implementation of RSFA's liability scheme which became effective for production after September 1, 1996. In addition, advance public notice and comment are unnecessary and contrary to public interest because the interim rule substantially restates the information collection provisions in the January 9, 1997, letter sent to all payors, and implements the request from lessees at the meetings discussed above that MMS assist them to comply with RSFA's mandate that they designate a Designee.

MMS also has determined that the 30-day delay of effectiveness provisions of the APA may be waived in this rulemaking. Section 553(d) of the APA permits waiver of the 30-day delayed effective date requirement for, inter alia, good cause. MMS finds that good cause exists for the same reasons stated above. Accordingly, the interim final rule will be immediately effective upon publication in the **Federal Register**. Nevertheless, MMS seeks the benefit of public comment. Accordingly, MMS invites interested persons to submit comments during the 60-day comment period. MMS may revise the interim final rule later in a final rule as appropriate based on those comments.

While this is an interim final rule, MMS intends to publish a notice of proposed rulemaking by the end of 1997 making more permanent the process for collecting designations from lessees. To aid public participation in that rulemaking, MMS will post comments received on this rule on the Internet at http://www.rmp.mms.gov.

## V. Section-by-Section Analysis

*30 CFR Part 210*

Section 210.55 Special Forms or Reports.

This section's contents are amended to give MMS the authority to require special reports by lessees and other persons who report and pay royalties. In particular, MMS may require such persons to submit information necessary for MMS to assure that lessees properly designate their Designees in a form that MMS can use in its database. The information will document the relationship between lessees, their lease(s), or portion(s) thereof, and the person(s) they designate to make payments to MMS on their behalf. As payors already are familiar with the MMS accounting system, MMS may require them to submit the information connecting the AID on which they are paying and the lessees for whom they are paying.

In addition to the name of the lessee, MMS may also require payors to tell MMS the address of that person and, if they have the information, the taxpayer identification number (TIN) of the lessee. MMS requires the current address in order to communicate with the lessee so that lessees are informed of the requirements of RSFA to designate a Designee, if they are not making payments to MMS on their own. MMS will also need the lessee's address to send notices to the lessee when demands are sent to payors, who are paying on their behalf. MMS requires the TIN to inform the Internal Revenue Service when MMS pays interest on overpayments under the requirements of RSFA, section 6. This section would also require persons whom a payor identifies it is making payments for to provide information to MMS.

*30 CFR Part 218*

Section 30 CFR 218.52 How does a lessee designate a Designee?

This section would be revised to explain how lessees make designations under RSFA section 6(g) and what information must be in such designations. MMS will need the name and address of each Designee, as well as the necessary accounting information to identify the payments made on your behalf as lessee. MMS will also need to know the start and end dates of the Designee's responsibility and whether the designation is limited to certain payments, for instance, just minimum royalty, or certain products, for instance, if you choose to designate your gas purchaser as the Designee for gas royalty only.

## VI. Procedural Matters

*The Regulatory Flexibility Act*

MMS has calculated a reporting burden of $840 for a typical small entity that reports and pays oil and gas royalties on Federal leases. About 2,400 small entities in the oil and gas industry will be affected by this rule. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities. This rule provides for the format in which information needed to comply with the requirements of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, Pub. L. 104–185, August 13, 1996, as corrected by Pub. L. 104–200.

*Executive Order 12630*

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights.''

*Executive Order 12866*

This rule is a significant rule under executive Order 12866 and has been reviewed by the Office of Management and Budget. MMS' analysis indicates the rule will have a total reporting cost of $3.1 million. Since the rule will have an annual effect on the economy of less than $100 million, the rule does not have a significant economic effect as defined by Executive Order 12866.

*Executive Order 12988*

The Department has certified to OMB that this rule meets the applicable reform standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

**Paperwork Reduction Act of 1995**

The MMS submitted the information collection contained in this interim final rulemaking to the Office of Management and Budget (OMB) with a request for emergency processing. It was approved by OMB and assigned OMB Control Number 1010-0107.

With this notice, we are starting the 60-day comment period. As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of the reporting burden imposed by this interim final rulemaking. Submit your comments to David, S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165; courier delivery to Building 85, Denver Federal Center, Denver, Colorado 80225; or e-mail David__Guzy@mms.gov.

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if they are received by OMB within 30 days of publication of this notice. However, MMS will consider all comments received during the comment period for this notice of interim final rulemaking.

In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

This information collection is titled Designation of Royalty Payment Responsibility. RSFA provides that owners of operating rights are primarily liable for royalty payments on their portions of their leases, and that owners of record title are secondarily liable. The Act allows lessees, operating rights owners and/or record title owners, to designate another person to pay royalties on their behalf by a written instrument filed with the Secretary. Finally, RSFA provides that the designated persons, designees, are not liable. This collection of information provides a mechanism for identifying lessees and their designees.

Currently, it is common for a payor rather than a lessee to make royalty and related payments on a Federal lease. When a payor pays royalties on a Federal lease on behalf of a lessee, RSFA requires that the lessee designate the payor as its designee. We are requiring each payor to provide us information regarding the lessee on whose behalf they are paying because we need to know who all the lessees are in order to inform them of their obligation to designate a payor to be

their lawful designee by a written instrument filed with the Secretary. RSFA made this payor designation requirement effective for lease production beginning September 1, 1996. We are asking payors and lessees to provide data required under RSFA so that we can fully implement the Act.

The hour burden for approximately 2,500 payors to respond to this collection of information is estimated at 60,000 hours. Payors have told us that to gather, collate, and enter required MMS data, line-by-line on a report or computer generated file, takes them approximately 1/2 hour per data line; an average payor will have approximately 48 original data lines (one original line of data will result in multiple lines of data when the payor is the designee and is reporting for multiple lessees). We estimate that we will receive 120,000 original data lines.

2,500 payors × 48 original data lines × ½ hour per data line = 60,000 burden hours

The hour burden to lessees is estimated at 30,000 hours. The MMS will develop reports that consolidate the payor-provided data for all leases for which the lessees are presumed to have designees. The lessee may confirm the information on these reports and/or modify the reports by amending and/or correcting the report information. We estimate that a lessee will take approximately 3/4 hour per confirmation request.

20,000 lessees × 2 confirmation requests × 3/4 hour per request = 30,000 burden hours

*Unfunded Mandate Reform Act of 1995*

The Department has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, Tribal, State governments or the private sector.

*National Environmental Policy Act of 1969*

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) is not required.

**List of Subjects**

*30 CFR Part 210*

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

*30 CFR Part 218*

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: July 10, 1997.

**Sylvia V. Baca,**

*Deputy Assistant Secretary for Land and Minerals Management.*

For the reasons stated in the preamble, MMS amends 30 CFR parts 210 and 218 as follows:

## PART 210—FORMS AND REPORTS

1. The authority citation for Part 210 continues to read as follows:

**Authority:** 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 3716 *et seq.*, 3720A *et seq.*, 9701 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. Section 210.55 is revised to read as follows:

### § 210.55 Special Forms or Reports.

(a) MMS may require you to submit additional information, forms, or reports other than those specifically referred to in this subpart. MMS will give you instructions for providing such information or filing such reports or forms. MMS will make requests for additional information, forms, or reports under this section in conformity with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, and other applicable laws.

(b) If you file a Form MMS–4025, Payor Information Form (PIF) under § 210.51, you must provide the following information to MMS upon request for each PIF:

(1) The AID number for the lease;

(2) The name, address, Taxpayer Identification Number (TIN), and phone number of the person for whom you are reporting and paying royalties or making other payments under the PIF;

(3) Whether the person you named in paragraph (b)(2) of this section with respect to the lease for which you filed the PIF is a:

(i) Lessee of record (record title owner);

(ii) Operating rights owner (working interest owner); or

(iii) Operator;

(4) The name, address, and phone number of the individual to contact for the person you named in paragraph (b)(2) of this section;

(5) Your TIN; and

(6) Whether you are the Designee of the person you named in paragraph (b)(2) of this section under 30 U.S.C. 1712(a), and, if so:

(i) The date your designation became effective; and

(ii) The date your designation terminates, if applicable; and

(iii) A copy of the written designation;

(c) If you have been identified under paragraph (b)(2) of this section, you must provide the following information to MMS upon request:

(1) Confirmation that you are the person identified under paragraph (b)(2) of this section;

(2) Confirmation that the person identified in paragraph (b)(6) of this section is your designee; and

(3) A designation under § 218.52 of this title if the person identified in paragraph (b)(6) of this section is not your Designee, and if you are not reporting and paying royalties and making other payments to MMS.

## PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for Part 218 continues to read as follows:

**Authority:** 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 3716 *et seq.*, 3720A *et seq.*, 9701 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. Section 218.52 is revised to read as follows:

### § 218.52 How does a lessee designate a Designee?

(a) If you are a lessee under 30 U.S.C. 1701(7), and you want to designate a person to make all or part of the payments due under a lease on your behalf under 30 U.S.C. 1712(a), you must notify MMS or the applicable delegated State in writing of such designation. Your notification for each lease must include the following:

(1) The AID number for the lease;

(2) The type of products you make payments for e.g., oil, gas.

(3) The type of payments you are responsible for e.g., royalty, minimum royalty, rental.

(4) Whether you are:

(i) A lessee of record (record title owner) in the lease, and the percentage of your record title ownership in the lease; or

(ii) An operating rights owner (working interest owner) in the lease, and the percentage of your operating rights ownership in the lease;

(5) The name, address, Taxpayer Identification Number (TIN), and phone number of your Designee;

(6) The name, address, and phone number of the individual to contact for the person you named in paragraph (a)(5) of this section;

(7) Your TIN;

(8) The date the designation is effective;

(9) The date the designation terminates, if applicable, and

(10) A copy of the written designation;

(b) The person you designate under paragraph (a) of this section is your Designee under 30 U.S.C. 1701(24) and 30 U.S.C. 1712(a).

(c) If you want to terminate a designation you made under paragraph (a) of this section, you must provide to MMS in writing before the termination:

(1) The date the designation is due to terminate; and

(2) If you are not reporting and paying royalties and making other payments to MMS, a new designation under paragraph (a) of this section.

(d) MMS may require you to provide notice when there is a change in the percentage of your record title or operating rights ownership.

[FR Doc. 97–20592 Filed 8–4–97; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

**[CGD 05–97–012]**

**RIN 2115–AE46**

## Special Local Regulations for Marine Events; Assateague Channel, Chincoteague, Virginia

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending permanent special local regulations established for an annual marine event held in the Assateague Channel, Chincoteague, Virginia by including an additional event for which the regulated area will be in effect. This rule updates the regulation in order to enhance the safety of life and property during the events.

**EFFECTIVE DATE:** This final rule is effective on September 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** S.L. Phillips, Project Manager, Auxiliary Branch, at (757) 398–6204.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On April 21, 1997, the Coast Guard published a notice of proposed rulemaking entitled special Local Regulations for Marine Events; Assateague Channel, Chincoteague, Virginia, in the **Federal Register** (62 FR 19239). The Coast Guard received no comments on the proposed rulemaking. No public hearing was requested, and none was held.

### Background and Purpose

Title 33 of the Code of Federal Regulations, section 100.519 established special local regulations for the Pony Penning Swim, a marine event held annually in the Assateague Channel, Chincoteague, Virginia. Since the promulgation of 33 CFR § 100.519, an additional marine event, the Chincoteague Power Boat Regatta, has been approved and scheduled on an annual basis in the regulated area. This rule adds the Chincoteague Power Boat Regatta to the list of events for which the regulations will be in effect, thereby eliminating the need for issuance of temporary rules for this event. This rule is necessary to control vessel traffic during the event to enhance the safety of participants, spectators, and transiting vessels.

### Discussion of Comments and Changes

The Coast Guard received no comments on the proposed rulemaking. Therefore, the proposed rule is being implemented without change.

### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). This rule does not impose any new restrictions on vessel traffic. It merely changes the effective period of the regulation and adds a Table which identifies specific events during which the regulated area will be in effect. Therefore, the Coast Guard certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

This final rule contains no collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

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

### Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.b.2.e(34) (h) of Commandant Instruction M16475.1b (as amended, 61 FR 13564; 27 March 1996), this rule is categorically excluded from further environmental documentation.

### List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

## PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.510 is amended by revising paragraphs (b)(1) and (c) and adding Table 1 to read as follows:

**§ 100.519 Assateague Channel, Chincoteague, Virginia.**

* * * * *

(b) *Special local regulations.*

(1) Except for participants registered with the event sponsor and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area

without the permission of the Patrol Commander.

* * * * *

(c) *Effective periods.* This regulation is effective annually for the duration of each marine event listed in Table 1, or as otherwise specified in the Coast Guard Local Notice to Mariners and a **Federal Register** notice. The Coast Guard Patrol Commander will announce by Broadcast Notice to Mariners the specific time periods during which the regulations will be enforced.

**Table 1 of § 100.519**

*Chincoteague Power Boat Regatta*

Sponsor: Chincoteague Chamber of Commerce
Date: Third Saturday and Sunday in June

*Pony Penning Swim*

Sponsor: Chincoteague Volunteer Fire Department
Date: Last Wednesday in July and the following Friday

Dated: July 14, 1997.

**Roger T. Rufe, Jr.,**

*Vice Admiral Commander, Fifth Coast Guard District.*

[FR Doc. 97–20564 Filed 8–4–97; 8:45 am]

BILLING CODE 4910–14–M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[TN–150–01–9711a; FRL–5866–1]**

## Approval and Promulgation of Implementation Plans, Tennessee: Approval of Revisions to Maintenance Plan for Knox County, Tennessee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Knox County portion of the State Implementation Plan regarding the Ozone Maintenance Plan and associated projections of future emissions submitted on January 18, 1995, by the Tennessee Department of Environment and Conservation. The purpose of this action is to establish an emissions budget in Knox County in accordance with the Transportation Conformity provisions promulgated on November 24, 1993.

**DATES:** This final rule is effective October 6, 1997, unless adverse or critical comments are received by September 4, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to Benjamin Franco at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file TN150–01–9711. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Benjamin Franco, (404)-562–9039.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L&C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. Telephone: (615) 532–0554.

Knox County Department of Air Pollution Control, City County Building, Suite 339, 400 West Main Street, Knoxville, Tennessee, 37902. Telephone: (615) 521–2488.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Franco at 404/562–9039.

**SUPPLEMENTARY INFORMATION:** Section 176(c)(2)(A) of the Clean Air Act specifically requires conformity determinations to show that ''emissions expected from implementation of such plans and programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions.'' SIP demonstrations of reasonable further progress, attainment, and maintenance contain these emission estimates and ''necessary emission reductions.'' The emissions budget is the mechanism EPA has identified for carrying out the demonstration of consistency.

The emissions budget may be revised at any time through the standard SIP revision process, provided the SIP demonstrates that the revised emission budget will not threaten attainment and maintenance of the standard or any milestone in the required timeframe. The State may choose to revise its SIP emission budgets in order to reallocate emissions among sources or among pollutants and precursors.

Section 51.456(b) of the Transportation Conformity Rule (58 FR 62232) provides that in cases where a SIP submitted prior to November 24, 1993, does not have an explicit emissions budget but quantifies a ''safety margin'' by which emissions from all sources are less than the total emissions that would be consistent with attainment, the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purpose of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

On August 26, 1992, the Tennessee Department of Environment and Conservation (TDEC) submitted an Ozone Maintenance Plan for Knox County that included a 1990 base year emission inventory and emissions projections. EPA published in the **Federal Register** on September 27, 1993, a notice approving the maintenance plan and emission projections. These emission projections were approved before the conformity rule was finalized on November 24, 1993. Therefore, the approved emission projections became the area's emission budget for conformity purposes.

On May 25, 1994, the Department of Environment and Conservation proposed a revision to the maintenance plan and emission projections. This revision provides a more accurate and practical budget for transportation planning conformity. The final conformity rule allows for areas to revise their emission projections as long as it does not affect attainment or the maintenance of the air quality standards. Section 51.456 of the final conformity rule allows an area to reallocate safety margins to highway and transit mobile sources for the purposes of transportation conformity. The State revision has allocated the safety margin in their emission projection to the mobile portion of the emissions budget. The following is the revised emission budget for Knox County submitted by the State.

KNOX COUNTY EMISSION BUDGET

[Tons/Day]

| Year | Area | Nonroad | Biogenic | Mobile | Point | Total |
|---|---|---|---|---|---|---|
| **Volatile Organic Compounds** | | | | | | |
| 1990 | 28.82 | 9.81 | 32.43 | 41.16 | 8.06 | 120.28 |
| 1993 | 29.25 | 9.96 | 32.43 | 29.28 | 8.64 | 109.56 |
| 2000 | 30.29 | 10.31 | 32.43 | *37.37 | 9.88 | 120.28 |
| 2004 | 30.90 | 10.52 | 32.43 | *35.94 | 10.49 | 120.28 |
| **Nitrogen Oxides** | | | | | | |
| 1990 | 3.66 | 9.77 | 0 | 41.73 | 8.96 | 64.12 |
| 1993 | 3.72 | 9.92 | 0 | 41.20 | 9.54 | 64.38 |
| 2000 | 3.85 | 10.27 | 0 | *38.99 | 11.01 | 64.12 |
| 2004 | 3.92 | 10.48 | 0 | *38.21 | 11.51 | 64.12 |
| **Carbon Monoxide** | | | | | | |
| 1990 | 7.54 | 68.89 | 0 | 296.32 | 3.00 | 375.75 |
| 1993 | 7.65 | 69.93 | 0 | 245.90 | 3.34 | 326.82 |
| 2000 | 7.92 | 72.41 | 0 | 220.72 | 3.67 | 304.72 |
| 2004 | 8.08 | 73.87 | 0 | 203.60 | 3.84 | 289.39 |

*Safety margin emission were reallocated to mobile sources. A safety margin is produced when the emissions from all sources are less than the total emissions that would be consistent with attainment.

**Final Action**

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 6, 1997, unless, by September 4, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 6, 1997.

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

**I. Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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, 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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Regional Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

*C. 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 informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated 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. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by section 804(2).

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 6, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides ,Ozone, Reporting and recordkeeping requirements.

Dated: July 9, 1997.

**Michael V. Payton,**

*Acting Regional Administrator*.

Chapter I, title 40, is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42.U.S.C. 7401–7671q.

## Subpart RR—Tennessee

2. Section 52.2220, is amended by adding paragraph (c)(151) to read as follows:

**§ 52.2220 Identification of plan.**

* * * * *

(c) * * *

(151) A Revision to Knox County Ozone Maintenance plan and emission projections submitted by the Tennessee Department of Environment and Conservation on January 18, 1995.

(i) Incorporation by reference.

(A) Knox County Ozone Maintenance plan and emission projections adopted on November 21, 1994.

(ii) Other material. None.

* * * * *

[FR Doc. 97–20578 Filed 8–4–97; 8:45 am]

BILLING CODE 6560–50–P

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101–17

**RIN 3090–AF94**

### Assignment and Utilization of Space

**AGENCY:** Public Buildings Service, General Services Administration.

**ACTION:** Interim Rule with Request for Comments.

**SUMMARY:** This interim rule, initially published in the **Federal Register** March 7, 1996, began the process of replacing Part 101–17 of the Federal Property Management Regulations (FPMR). The rule repealed the outdated and superseded permanent FPMR Part 101–17 and provided new guidance concerning the location of Federal facilities in urban areas. The rule expired March 7, 1997. This supplement extends the interim rule indefinitely.

**DATES:** Effective date: March 8, 1997.

Comment date: September 4, 1997.

**ADDRESSES:** Comments should be submitted to the General Services Administration, Public Buildings Service, Office of Property Acquisition and Realty Services (PE), Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Alan Waldron, Acting Assistant Commissioner, Office of Property Acquisition and Realty Services, at (202) 501–1025.

**SUPPLEMENTARY INFORMATION:** The purpose of this interim rule is to provide new, permanent FPMR guidance regarding the location of Federal facilities in urban areas.

On August 16, 1978, President Carter issued Executive Order 12072, which directs Federal agencies to give first consideration to centralized community business areas when filling federal space needs in urban areas. The objective of the Executive order is that Federal facilities and Federal use of space in urban areas serve to strengthen the nation's cities and make them attractive places to live and to work. This regulation serves to reaffirm this Administration's commitment to Executive Order 12072 and its goals.

The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) An initial regulatory flexibility analysis has therefore not been performed.

The Paperwork Reduction Act does not apply to this action because the proposed changes to the Federal Property Management Regulations do not impose reporting, recordkeeping or information collection requirements which require the approval of the Office of Management and Budget pursuant to 44 U.S.C. 3501, *et seq.*

**List of Subjects in 41 CFR Part 101–17**

Administrative practices and procedures, Federal buildings and facilities, Government real property management.

**Authority:** Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following Interim Rule D–1 is added to the appendix at the end of Subchapter D to read as follows:

**Federal Property Management Regulations; Interim Rule D–1**

Supplement 1

To: Heads of Federal Agencies

Subject: Assignment and Utilization of Space

1. *Purpose.* This interim rule, initially published in the **Federal Register** March 7, 1996, began the process of replacing Part 101–17 of the Federal Property Management Regulations (FPMR). The rule repealed the outdated and superseded permanent FPMR Part 101–17 and provided new guidance concerning the location of Federal facilities in urban areas. The rule expired on March 7, 1997. This supplement extends the interim rule indefinitely.

2. *Effective date.* March 8, 1997. Comments should be submitted on or before 30 calendar days following publication in the **Federal Register**.

3. *Comments.* Comments should be submitted to the General Services Administration, Public Buildings Service, Office of Property Acquisition and Realty Services (PE), Washington, DC 20405.

4. *Effect on other directives.* This interim rule amends 41 CFR Part 101–17 by deleting all subparts and sections in their entirety and by adding a new §101–17.205 entitled ''Location of Space.''

Dated: April 21, 1992.

David J. Barram,

*Acting Administrator of General Services.*

**Attachment A**

**"Subchapter D—Public Buildings and Space**

**PART 101–17—ASSIGNMENT AND UTILIZATION OF SPACE**

**§101–17.205 Location of Space**

(a) Each Federal agency is responsible for identifying its geographic service area and the delineated area within which it wishes to locate specific activities, consistent with its mission and program requirements, and in accordance with all applicable statutes, regulations and policies. Specifically, under the Rural Development Act of 1972, as amended, 42 U.S.C. §3122, agencies are required to give first priority to the location of new offices and other facilities in rural areas. When agency mission and program requirements call for location in an urban area, agencies must comply with Executive Order 12072, August 16, 1978, 3 CFR 213 (1979), which requires that first consideration be given to central business areas (CBAs) and other designated areas. The agency shall submit to GSA a written statement explaining the basis for the delineated area.

(b) GSA shall survey agencies' mission, housing, and location requirements in a community and include these considerations in community-based policies and plans. These plans shall provide for the location of federally-owned and leased facilities, and other interests in real property including purchases, at locations which represent the best overall value to the Government consistent with agency requirements.

(c) Whenever practicable and cost-effective, GSA will consolidate elements of the same agency or multiple agencies in order to achieve the economic and programmatic benefits of consolidation.

(d) (1) GSA will consult with local officials and other appropriate Government officials and consider their recommendations for, and review of, general areas of possible space or site acquisition. GSA will advise local officials of the availability of data on GSA plans and programs, and will agree upon the exchange of planning information with local officials. GSA will consult with local officials to identify CBAs.

(2) With respect to an agency's request for space in an urban area, GSA shall provide appropriate Federal, State, regional, and local officials such notice as will keep them reasonably informed about GSA's proposed space action. For all proposed space actions with delineated areas either partially or wholly outside the CBA, GSA shall consult with such officials by providing them with written notice, by affording them a proper opportunity to respond, and by considering all recommendations for and objections to the proposed space action. All contacts with such officials relating to proposed space actions must be appropriately documented in the official procurement file.

(e) GSA is responsible for reviewing an agency's delineated area to confirm that, where appropriate, there is maximum use of existing Government-controlled space and that established boundaries provide competition when acquiring leased space.

(f) In satisfying agency requirements in an urban area, GSA will review an agency requested delineated area to ensure that the area is within the CBA. If the delineated area requested is outside the CBA, in whole or part, an agency must provide written justification to GSA setting forth facts and considerations sufficient to demonstrate that first consideration has been given to the CBA and to support the determination that the agency program function(s) involved cannot be efficiently performed within the CBA.

(g) Agency justifications for locating outside CBAs must address, at a minimum, the efficient performance of the missions and programs of the agencies, the nature and function of the facilities involved, the convenience of the public served, and the maintenance and improvement of safe and healthful working conditions for employees.

(h) GSA is responsible for approving the final delineated area. As the procuring agency, GSA must conduct all acquisitions in accordance with the requirements of all applicable laws, regulations, and Executive orders. GSA will review the identified delineated area to confirm its compliance with all applicable laws, regulations, and Executive orders, including the Rural Development Act of 1972, as amended, the Competition in Contracting Act, as amended, 41 U.S.C. §§252–266, and Executive Order 12072.

(i) Executive Order 12072 provides that ''space assignments shall take into account the management needs for consolidation of agencies or activities in common or adjacent space in order to improve administration and management and effect economies.'' Justifications that rely on consolidation or adjacency requirements will be carefully reviewed for legitimacy.

(j) Executive Order 12072 directs the Administrator of General Services to ''[e]nsure, in cooperation with the heads of Executive agencies, that their essential space requirements are met in a manner that is economically feasible and prudent.'' Justifications that rely on budget or other fiscal restraints for locating outside the CBA will be carefully reviewed for legitimacy.

(k) Justifications based on executive or personnel preferences or other matters which do not have a material and significant adverse impact on the efficient performance of agency program functions are not acceptable.

(l) In accordance with the Competition in Contracting Act, GSA may consider whether restricting the delineated area to the CBA will provide for competition when acquiring leased space. Where it is determined that an acquisition should not be restricted to the CBA, GSA may expand the delineated area in consultation with the requesting agency and local officials. The CBA must continue to be included in such an expanded area.

(m) If, based on its review of an agency's requested delineated area, GSA concludes that changes are appropriate, GSA will discuss its recommended changes with the requesting agency. If after discussions the requesting agency does not agree with GSA's delineated area recommendation, the agency may take the steps described below. If an agency elects to request a review of the GSA's delineated area recommendation, GSA will continue to work on the requirements development and other activities related to the requesting agency's space request. GSA will not issue a solicitation to satisfy an agency's space request until all requested reviews have been resolved.

(1) For space actions of less than 25,000 square feet, an agency may request a review of GSA's delineated area recommendation by submitting a written request to the responsible Assistant Regional Administrator for the Public Buildings Service. The request for review must state all facts and other considerations and must justify the requesting agency's proposed delineated area in light of Executive Order 12072 and other applicable statutes, regulations, and policies. The Assistant Regional Administrator will issue a decision within fifteen (15) working days. The decision of the Assistant Regional Administrator will be final and conclusive.

(2) For space actions of 25,000 square feet or greater, a requesting agency may request a review of GSA's delineated area recommendation by submitting a written request to the Commissioner of the Public Buildings Service that the matter be referred to an interagency council for decision. The interagency council will be established specifically to consider the appeal and will be comprised of the Administrator of General Services or his/her designee, the Secretary of Housing and Urban Development, or his/her designee, and such other Federal official(s) as the Administrator may appoint.

(n) The presence of the Federal Government in the National Capital Region (NCR) is such that the distribution of Federal installations will continue to be a major influence in the extent and character of development. These policies shall be applied in the GSA National Capital Region, in conjunction with regional policies established by the National Capital Planning Commission and consistent with the general purposes of the National Capital Planning Act of 1959 (66 Stat. 781), as amended. These policies shall guide the development of strategic plans for the housing of Federal agencies within the National Capital Region.

(o) Consistent with the policies cited in paragraphs (a), (b), (c) and (e) above, the use of buildings of historic architectural, or cultural significance within the meaning of section 105 of the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2505) will be considered as alternative sources for meeting Federal space needs.

(p) As used in §101–17.205, the following terms have the following meanings:

(1) ''CBA'' means the centralized community business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials in accordance with Executive order 12072.

(2) ''Delineated area'' means the specific boundaries within which space will be obtained to satisfy an agency space requirement.

(3) ''Rural area'' means any area that (i) is within a city or town if the city or town has

a population of less than 10,000 or (ii) is not within the outer boundaries of a city or town if the city or town has a population of 50,000 or more and if the adjacent urbanized and urbanizing areas have a population density of more than 100 per square mile.

(4) ''Urban area'' means any Metropolitan Area (MA) as defined by the Office of Management and Budget (OMB) and any non-MA that meets one of the following criteria:

(i) A geographical area within the jurisdiction of any incorporated city, town, borough, village, or other unit of general local government, except county or parish, having a population of 10,000 or more inhabitants.

(ii) That portion of the geographical area within the jurisdiction of any county, town, township, or similar governmental entity which contains no incorporated unit of general local government, but has a population density equal to or exceeding 1,500 inhabitants per square mile; or

(iii) That portion of any geographical area having a population density equal to or exceeding 1,500 inhabitants per square mile and situated adjacent to the boundary of any incorporated unit of general local government which has a population of 10,000 or more inhabitants. (Reference: Intergovernmental Cooperation Act of 1968, 40 U.S.C. 535.)

[FR Doc. 97–20544 Filed 8–4–97; 8:45 am]

**BILLING CODE 6820–24–P**

## DEPARTMENT OF ENERGY

### 48 CFR Parts 904, 909, 923, 926, 952 and 970

**RIN 1991–AB31**

### Acquisition Regulation: Elimination of Non-Statutory Certification Requirements

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to eliminate all non-statutorily imposed contractor and offeror certification requirements.

**DATES:** This final rule is effective September 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** John R. Bashista (202) 586–8192 (telephone); (202) 586–0545 (facsimile); john.bashista@hq.doe.gov (electronic mail).

**SUPPLEMENTARY INFORMATION:**



## I. Background

Section 4301(b)(1)(B) of the Clinger-Cohen Act of 1996, Pub. L. 104–106, requires agencies that have procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute to issue for public comment a proposal to amend their regulations to remove the certification requirements. Such certification requirements may be omitted from the agency proposal if (i) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and (ii) the head of the executive agency approves in writing the retention of such certification requirement.

A notice of proposed rulemaking was published in the **Federal Register** on August 29, 1996 (61 FR 45391) which constituted DOE's proposal for the elimination of all non-statutorily imposed contractor and offeror certification requirements from the DEAR pursuant to section 4301(b)(1)(B) of the Clinger-Cohen Act of 1996. No comments were received. Accordingly, the Department adopts the proposed rule as final.

The proposed rule made reference to a separate rulemaking which would eliminate the certification contained in section 952.209–70, Organizational conflicts of interest, disclosure or representation. A separate final rule will be published in the **Federal Register** to amend section 952.209–70 to eliminate the certification previously contained therein.

## II. Explanation of Revisions

1. Section 952.204–2, Security Requirements, is amended to remove the non-statutory certification requirement pertaining to retention by a contractor of classified matter after contract completion or termination. A contractor seeking to retain classified material is still required to identify such material, and the reasons for its retention, to the contracting officer. However, there is no need to certify the information.

2. Section 952.204–73, Foreign ownership, control, or influence (FOCI) over contractor, is amended to remove the requirement for offerors to certify that FOCI data submitted to the Department is accurate, complete and current and that the disclosure is made in good faith; and to remove the requirement for offerors to certify that FOCI information previously submitted to DOE for a facility security clearance is accurate, complete and current. The disclosure requirement at DEAR 904.7003, however, will remain. In addition, technical and conforming amendments to the DEAR are made to 904.7003, 904.7005 and 904.7103.

3. Section 952.226–73, Energy Policy Act target group certification, is amended to remove the language requiring offerors to certify as to their status as one of the designated target groups under section 3021 of the Energy Policy Act of 1992. This provision is amended to require a representation from offerors regarding their status instead of a certification. In addition, technical and conforming amendments to the DEAR are made to subsection 926.7007 pursuant to the amendment of subsection 952.226–73.

4. Section 952.227–13, Patent Rights—Acquisition by the Government, paragraph (e)(3), is amended to remove the certification requirements for contractors in the interim and final reports pertaining to the disclosure of all inventions developed under the subject contract. Contractors are still required to submit interim and final reports and to disclose all inventions developed under the subject contract, however, there is no need to certify the information.

5. Section 952.227–80, Technical data certification, which includes a requirement for offerors to certify that they have not delivered or are not obligated to deliver to the Government under any other contract or subcontract the same or substantially the same technical data as included in their offer to the Department, is removed.

6. Section 952.227–81, Royalty Payments Certification, which includes a certification requirement for offerors to disclose whether their contract price includes an amount representing the payment of royalty by the offeror to others in connection with contract performance and, if so, to identify pertinent information about the royalty, is removed.

7. Section 970.5204–57, Certification regarding workplace substance abuse programs at DOE facilities, is amended to remove the requirement for offerors to certify that they will provide to the contracting officer within 30 days after

either notification of selection for award or award of a contract, their written workplace substance abuse program consistent with the requirements of 10 CFR 707. Instead, offerors are required to agree to provide a drug-free workplace in accordance with 41 U.S.C. 701(a)(1) as a condition of responsibility prior to contract award. In addition, technical and conforming amendments to the DEAR are made to sections 909.104, 923.570–2, 923.570–3, 970.2305–4 and 970.2305–5.

## III. Procedural Requirements

*A. Review Under Executive Order 12612*

Executive Order 12612, entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

*B. Review Under Executive Order 12866*

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

*C. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

*D. Review Under the Regulatory Flexibility Act*

This final rule has been reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, that requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. In the preamble to the proposed rule, DOE noted that the proposed rule would eliminate any compliance costs on small businesses associated with the administrative aspects of providing the express certifications which are eliminated from the Department of Energy Acquisition Regulation. The Department certified that this rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis had been prepared. DOE did not receive any comments on this certification.

*E. Review Under the National Environmental Policy Act*

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

*F. Review Under the Paperwork Reduction Act*

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

*G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996*

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

*H. Review Under the Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking only affects private sector entities, and the impact is less than $100 million.

**List of Subjects in 48 CFR Parts 904, 909, 923, 926, 952 and 970**

Government procurement.

Issued in Washington, DC on July 30, 1997.

**Richard H. Hopf,**

*Deputy Assistant Secretary for Procurement and Assistance Management.*

For the reasons set forth in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citations for parts 904, 909, 923, 926 and 952 continue to read as follows:

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c).

## PART 904—ADMINISTRATIVE MATTERS

2. Section 904.7003 is amended by revising paragraph (d) to read as follows:

**904.7003 Disclosure of foreign ownership, control, or influence.**

* * * * *

(d) The contracting officer shall not award or extend any contract subject to this subpart, exercise any options under a contract, modify any contracts subject to this subpart, or approve or consent to a subcontract subject to this subpart unless:

(1) The contractor provides the information required by the solicitation provision at 48 CFR 952.204–73, and

(2) The contracting officer has made a positive determination in accordance with 48 CFR 904.7004.

3. Section 904.7005 is amended by revising paragraph (a) to read as follows:

**904.7005 Solicitation provision and contract clause.**

(a) The contracting officer shall insert the provision at 48 CFR 952.204–73, Foreign Ownership, Control or Influence over Contractor, in all solicitations for contracts subject to 48 CFR 904.7001.

* * * * *

4. Section 904.7103 is amended by revising paragraph (a) to read as follows:

**904.7103 Solicitation provision and contract clause.**

(a) Any solicitation, including those under simplified acquisition procedures, for a contract under the national security program which will require access to proscribed information shall include the provision at 48 CFR 952.204–73 with its Alternate I.

* * * * *

## PART 909—CONTRACTOR QUALIFICATIONS

5. Section 909.104–1 is amended by revising paragraph (h) to read as follows:

**909.104–1 General Standards. (DOE coverage—paragraph (h))**

(h) For solicitations for contract work subject to the provisions of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, the prospective contractor must agree, in accordance with 48 CFR 970.5204–57, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, to provide the contracting officer with its written workplace substance abuse program in order to be determined responsible and, thus, eligible to receive the contract award.

## PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

6. Section 923.570–2 is amended by revising paragraph (a) to read as follows:

**923.570–2 Solicitation provision and contract clause.**

(a) The contracting officer shall insert the provision at 48 CFR 970.5204–57, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 48 CFR 923.570–1, Applicability.

* * * * *

7. Section 923.570–3 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows, and by removing paragraph (b)(4):

**923.570–3 Suspension of payments, termination of contract, and debarment and suspension actions.**

* * * * *

(b) * * *

(1) * * *

(2) The contractor has failed to comply with the terms of the provision at 48 CFR 970.5204–57; or

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes for violations occurring on the DOE-owned or -controlled site, as to indicate that the contractor has failed to make a good faith effort to provide a drug free workplace.

## PART 926—OTHER SOCIOECONOMIC PROGRAMS

8. Section 926.7007 is amended by revising paragraph (d) to read as follows:

**926.7007 Solicitation provisions and contract clauses.**

* * * * *

(d) The contracting officer shall insert the provision at 48 CFR 952.226–73, Energy Policy Act Target Group Representation, in solicitations for Energy Policy Act procurements.

* * * * *

## PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Section 952.204–2 is amended by revising the clause date and paragraphs (a) and (b) of the clause to read as follows:

**952.204–2 Security**

* * * * *

Security (SEP 1997)

(a) Responsibility. It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) Regulations. The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.

* * * * *

10. Section 952.204–73 is amended by removing the certification language following the list of questions at the end of paragraph (c) and preceding paragraph (d), and revising the clause date and paragraph (e) to read as follows:

**952.204–73 Foreign ownership, control, or influence over contractor (Representation)**

* * * * *

Foreign Ownership, control or influence over contractor (JUL 1997)

* * * * *

(c) * * *

(d) * * * * *

(e) The offeror shall require any subcontractors having access to classified information or a significant quantity of special nuclear material to provide responses to the questions in paragraph (c) of this provision directly to the DOE contracting officer.

* * * * *

11. Section 952.226–73 is amended by revising the clause date and the introductory text to paragraph (a) of the provision to read as follows:

**952.226–73 Energy Policy Act target group representation.**

* * * * *

Energy Policy Act target group representation (SEP 1997)

(a) The offeror is:

* * * * *

12. Section 952.227–13 is amended by revising the clause date and paragraph (e)(3) of the clause to read as follows:

**952.227–13 Patent rights-acquisition by the Government**

* * * * *

Patent rights-acquisition by the Government (SEP 1997)

* * * * *

(e) Invention identification, disclosures, and reports.

* * * * *

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or containing a statement that there were no such subcontracts.

* * * * *

**952.227–80 and 952.227–81 [Removed]**

13. Sections 952.227–80 and 952.227–81 are removed.

14. Section 952.227–83 is amended by revising the introductory text to read as follows:

**952.227–83 Rights in technical data solicitation representation.**

Pursuant to 48 CFR 927.7004–1 and 927.7004–2, include this provision and the legend at FAR 52.215–12 in solicitations which may result in contracts for research, development, or demonstration work or contracts for supplies in which delivery of required technical data is contemplated.

* * * * *

## PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

15. The authority citation for part 970 continues to read as follows:

**Authority:** Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

16. Subsection 970.2305–4 is amended by revising paragraph (a) to read as follows:

**970.2305–4 Solicitation provision and contract clause.**

(a) The contracting officer shall insert the provision at 48 CFR 970.5204–57, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations for the management and operation of DOE-owned or -controlled sites operated under the authority of the Atomic Energy Act of 1954, as amended.

* * * * *

17. Subsection 970.2305–5 is amended by revising paragraph (b)(2) to read as follows:

**970.2305–5 Suspension of payments, termination of contract, and debarment and suspension actions.**

* * * * *

(b) * * *

(1) * * *

(2) The contractor has failed to comply with the terms of the provision at 48 CFR 970.5204–57;

* * * * *

18. Subsection 970.5204–57 is amended by revising the section and provision heading, removing paragraph (d) of the provision, and revising paragraphs (b) and (c) of the provision to read as follows:

**970.5204–57 Agreement regarding workplace substance abuse programs at DOE facilities.**

* * * * *

Agreement Regarding Workplace Substance Abuse Programs At DOE Sites (SEP 1997)

* * * * *

(b) By submission of its offer, the officer agrees to provide to the contracting officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707.

(c) Failure of the offeror to agree to the condition of responsibility set forth in paragraph (b) of this provision, renders the offeror unqualified and ineligible for award.

[FR Doc. 97–20556 Filed 8–4–97; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

## 49 CFR Chapter X

**[STB Ex Parte No. 567]**

## Nomenclature Changes in the Board's Regulations

**AGENCY:** Surface Transportation Board.

**ACTION:** Final rules.

**SUMMARY:** The Board revises its regulations to make nomenclature changes to reflect the transfer of functions from the Interstate Commerce Commission to the Surface Transportation Board.

**EFFECTIVE DATE:** These rules are effective August 5, 1997.

**FOR FURTHER INFORMATION CONTACT:** James W. Greene, (202) 565–1578. [TDD for the hearing impaired: (202) 565–1695.]

**SUPPLEMENTARY INFORMATION:** The Surface Transportation Board (Board) is revising its regulations to reflect nomenclature changes effected by the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995) (ICCTA). The ICCTA abolished the Interstate Commerce Commission (ICC) and eliminated many of its functions. Some of the ICC's retained functions were transferred directly to the Board, while others were transferred directly to the Secretary of Transportation (and subsequently delegated to the Federal Highway Administration (FHWA)). The ICC's regulations in 49 CFR chapter X were, however, transferred en masse to the Board, after which some were subsequently transferred to the FHWA and redesignated in 49 CFR chapter III.

In various rulemaking proceedings that it has conducted since the ICCTA was enacted, the Board has eliminated or revised many of its regulations, and, in the revised regulations, we have made the necessary nomenclature changes to reflect the transfer of functions from the ICC to the Board. Nevertheless, numerous regulations in 49 CFR Chapter X continue to contain incorrect references to the ICC, and we are revising those regulations to remove the ICC references and add references to the Board.[1]

### Small Entities

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities.

### Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: July 29, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

**Vernon A. Williams,**

*Secretary.*

For the reasons set forth in the preamble, parts 1002 through 1332 (except in part 1201 subpart A (ii)16.(a), part 1206, part 1249, and part 1312) of title 49, chapter X, of the Code of Federal Regulations are amended as follows:

In the list below, in the order listed, remove the term indicated in the left column from wherever it appears in parts 1002 through 1332 (except in part 1201 subpart A (ii)16.(a), part 1206, part 1249, and part 1312), and add in its place the term indicated in the right column:

[1] Certain regulations are being excluded from these revisions because they already include the appropriate nomenclature, will be revised in the near future to reflect the nomenclature and other changes, or will be redesignated to other parts of the CFR.

| Remove | Add |
|---|---|
| Interstate Commerce Commission | Surface Transportation Board |
| Interstate Commerce Commission's | Surface Transportation Board's |
| Commissioner | Board Member |
| Commissioner's | Board Member's |
| Commissioners | Board Members |
| Commission | Board |
| Commission's | Board's |
| ICC | STB |
| ICC's | STB's |

[FR Doc. 97–20568 Filed 8–4–97; 8:45 am]

**BILLING CODE 4915–00–P**

# Proposed Rules

**Federal Register**
Vol. 62, No. 150
Tuesday, August 5, 1997

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 96–NM–230–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 50 series airplanes. This proposal would require installation of a reinforcement fitting at the junction of the baggage floor and frame 35 on both the left and right-hand sides of the airplane. This proposal is prompted by a report that, during fatigue testing, fatigue cracking was found in the subject areas due to insufficient reinforcement. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the airframe.

**DATES:** Comments must be received by September 15, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–230–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet Corporation, Teterboro Airport, P. O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tom Groves, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 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 96–NM–230–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. 96–NM–230–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Dassault Model Mystere-Falcon 50 series airplanes. The DGAC advises that, during routine fatigue testing on a Model Mystere-Falcon test article, a fatigue crack was found at the junction of the baggage floor and frame 35. The cause of this condition has been attributed to insufficient reinforcement of the affected area. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airframe.

### Explanation of Relevant Service Information

Dassault has issued Service Bulletin AMD-BA F50–122, dated June 25, 1986, which describes procedures for installing a reinforcement fitting at the junction of the baggage floor and frame 35 on both the left and right-hand sides of the airplane. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 86–74–5(B), dated June 25, 1986, in order to assure the continued airworthiness of these airplanes in France.

Additionally, Dassault has issued Service Bulletin AMD-BA F50–163, dated April 10, 1996, which describes procedures for extending the normal maximum operating altitude of 45,000 feet to 49,000 feet. Dassault has issued this service bulletin as an optional incorporation, and the DGAC has not classified this service bulletin as mandatory.

### FAA's Conclusions

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

### Explanation of Requirements of Proposed Rule

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 installation of a reinforcement fitting at the junction of the baggage floor and frame 35 on both the left and right-hand sides of the airplane. The actions would be required to be accomplished in accordance with Dassault Service Bulletin AMD-BA F50–122, as described previously.

For airplanes that have accumulated 10,000 or more total landings and on which Dassault Service Bulletin AMD-BA F50–163 (which is optional) is accomplished after the effective date of this proposed AD, this proposed AD would require that the installation of a reinforcement fitting in accordance with Dassault Service Bulletin AMD-BA F50–122 be accomplished concurrently with the procedures specified in Dassault Service Bulletin AMD-BA F50–163. Since airplanes that have accomplished service bulletin AMD-BA F50–163 are permitted to fly at higher altitudes than unmodified airplanes, the FAA finds that the risk of developing fatigue cracking in the fuselage pressure vessel increases. Installation of a reinforcement fitting (as required by this proposed AD), in conjunction with the accomplishment of the procedures specified in Dassault Service Bulletin AMD-BA F50–163, will prevent fatigue cracking in the area of the junction of the baggage floor and frame 35, which could result in reduced structural integrity of the airframe.

### Cost Impact

The FAA estimates that 26 Dassault Model Mystere-Falcon 50 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 50 work hours per airplane to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would cost approximately $7,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $260,000, or $10,000 per airplane.

The 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.

### Regulatory Impact

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. 106(g), 40113, 44701.

### §39.13 [Amended]

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

**Dassault Aviation:** Docket 96-NM–230-AD.

*Applicability:* Model Mystere-Falcon 50 series airplanes, serial numbers 1 through 49 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 otherwise 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 request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking at the junction of the baggage floor and frame 35, which could result in reduced structural failure of the airframe, accomplish the following:

(a) Install a reinforcement fitting at the junction of the baggage floor and frame 35 on both the left-and right-hand sides of the airplane, in accordance with Avions Marcel Dassault-Breguet Aviation (AMD-BA) Service Bulletin F50–122, dated June 25, 1986, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes on which AMD-BA Service Bulletin F50–163 has been incorporated as of the effective date of this AD: Prior to the accumulation of 10,000 total flights or 6 months after the effective date of this AD, whichever occurs later.

(2) For airplanes on which AMD-BA Service Bulletin F50–163 has not been incorporated as of the effective date of this AD: Perform the requirements of paragraph (a) of this AD at the time specified in either paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) Except for those airplanes identified in paragraph (a)(2)(ii), prior to the accumulation of 14,000 total flights or 6 months after the effective date of this AD, whichever occurs later.

(ii) If incorporation of AMD-BA Service Bulletin F50–163 is accomplished at or after the accumulation of 10,000 total flights and prior to the accumulation of 14,000 total flights: Perform the requirements of paragraph (a) of this AD concurrently with the incorporation of AMD-BA Service Bulletin F50–163.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

(c) 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 July 30, 1997.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–20539 Filed 8–4–97; 8:45 am]

BILLING CODE 4910–13–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MD 039–3012; FRL–5869–7]**

## Approval and Promulgation of Air Quality Implementation Plans; Maryland; 15 Percent Rate-of-Progress Plan for the Baltimore Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** EPA is proposing conditional approval of the State Implementation Plan (SIP) revision submitted by the State of Maryland for the Baltimore severe ozone nonattainment area to meet the 15 percent rate-of-progress (ROP) requirements (also known as the 15% plan) of the Clean Air Act (the Act). EPA is proposing conditional approval because the 15% plan, submitted by the State of Maryland, will result in significant emission reductions from the 1990 baseline emissions of volatile organic compounds (VOCs) which contribute to the formation of ground level ozone and, thus, will improve air quality. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Comments on this proposed action must be postmarked by September 4, 1997.

**ADDRESSES:** Written comments may be mailed to David L. Arnold, Chief, Ozone/Carbon Monoxide, and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

**FOR FURTHER INFORMATION CONTACT:** Carolyn M. Donahue, Ozone/Carbon Monoxide, and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, or by telephone at (215) 566–2095. Questions may also be addressed via email at donahue.carolyn@epamail.epa.gov. Please note that only written comments can be accepted for inclusion in the docket.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 182(b)(1) of the Act, as amended in 1990, requires ozone nonattainment areas classified as moderate or above to develop plans to reduce VOC emissions by 15% from 1990 baseline levels in the area while accounting for growth from 1990 to 1996. VOCs emitted during the summer months contribute to the formation of ground level ozone.

The Baltimore area is classified as a severe ozone nonattainment area and is subject to the 15% requirement. The Baltimore ozone nonattainment area consists of the Counties of Anne Arundel, Baltimore, Carroll, Harford, Howard, and the City of Baltimore. These areas are subject to Maryland's 15% plan.

The Act sets limitations on the creditability of certain control measures towards reasonable further progress. Specifically, states cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (e.g., new car emissions standards) promulgated prior to 1990; or for reductions stemming from regulations promulgated prior to 1990 to lower the volatility (i.e., Reid Vapor Pressure (RVP)) of gasoline. Furthermore, the Act does not allow credit towards reasonable further progress (RFP) for post-1990 corrections to existing motor vehicle inspection and maintenance (I/M) programs or corrections to reasonably available control technology (RACT) rules, since these programs were required to be in-place prior to 1990. In addition to these restrictions, a creditable measure must be either in the approved SIP, result from a national rule promulgated by EPA or be contained in a permit issued under Title V of the Act. Any measure must result in real, permanent, quantifiable, and enforceable emission reductions to be creditable toward the 15% goal.

In Maryland, three nonattainment areas are subject to the 15% ROP requirements of the Act. These are Cecil County (part of the Philadelphia-Wilmington-Trenton severe nonattainment area), the Baltimore nonattainment area, and the Maryland portion of the Metropolitan Washington, DC serious nonattainment area. EPA is taking action today only on the Baltimore nonattainment area. Cecil County and the Maryland portion of the Metropolitan Washington, DC nonattainment area are the subjects of separate rulemaking notices.

On April 16, 1997 and May 13, 1997, Maryland submitted draft revised 15% plans for the Baltimore area. Maryland scheduled a public hearing on the proposed revisions to its plan on August 13, 1997. EPA is taking action today on Maryland's July 12, 1995 submittal of its 15% plan with the knowledge that Maryland will be making a formal SIP revision revising that 15% plan.

EPA has reviewed Maryland's July 12, 1995 15% plan submittal and has identified several deficiencies, which prohibit its full approval. A detailed discussion of these deficiencies is included below, in the ANALYSIS portion of this rulemaking action, and also in the Technical Support Document (TSD) prepared by EPA for this action. Copies of the TSD are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice. Due to these deficiencies, it cannot be affirmatively determined that the State's plan achieves the 15% ROP target for reductions in VOCs. Therefore, EPA is proposing conditional approval of this 15% plan.

### II. Analysis of the SIP Revision

*A. Base Year Emission Inventory*

The baseline from which states must determine the required reductions for 15% planning is the 1990 VOC base year emissions inventory. The inventory is broken down into several emissions source categories: Stationary, area, on-road mobile, and off-road mobile. Maryland submitted formal SIP revisions containing the 1990 VOC base year inventory for the Baltimore nonattainment area on July 12, 1995. EPA approved Maryland's 1990 base year inventory submittals on September 27, 1996 (61 FR 50715).

In the Baltimore 15% plan, Maryland submitted a 1990 mobile source base year inventory of 134.2 tons VOC per day (TPD). However, the EPA approved 1990 mobile source base year inventory for the Baltimore nonattainment area is 131.5 TPD. The 1990 mobile source inventory of 134.2 TPD, and the resulting 1990 ROP base year inventory of 346.8 TPD, are used throughout this action; however, as a condition of this rulemaking, Maryland must revise their 15% plan calculations to reflect the approved base year inventory for the Baltimore nonattainment area.

*B. Growth in Emissions Between 1990 and 1996*

EPA has interpreted the Act to require that reasonable further progress towards attainment of the ozone standard must be obtained after offsetting any growth expected to occur over that period. Therefore, to meet the 15% ROP requirement, a state must enact measures achieving sufficient emissions reductions to offset projected growth in emissions, in addition to achieving a 15% reduction of VOC emissions from baseline levels. Thus an estimate of VOC emissions growth from 1990 to 1996 is necessary for determining whether the 15% reduction target has been achieved. Growth is calculated by multiplying the 1990 base year inventory by acceptable forecasting indicators. Growth must be determined separately for each source, or by source category, since sources typically grow at different rates. EPA's inventory preparation guidance recommends the following indicators, as applied to emission units in the case of stationary sources or to a source category in the case of area sources, in order of preference: product output, value added, earnings, and employment. Population can also serve as a surrogate indicator.

Maryland's 15% plan contains growth projections for point, area, on-road motor vehicle, and non-road vehicle source categories. For a detailed description of the growth methodologies used by the State, please refer to the TSD for this action.

To estimate growth for point, area, and non-road mobile sources, Maryland used acceptable growth factor surrogates such as population, employment and vehicle miles traveled (VMT). The travel demand computer model, MOBILE5a, was used to project growth for on-road sources. The State's methodology for selecting growth factors and applying them to the 1990 base year emissions inventory to estimate growth in emissions in point, area, on-road mobile, and off-road mobile sources from 1990 to 1996 is approvable.

*C. Calculation of Target Level Emissions*

EPA has interpreted section 182(b) of the Act to require that the base year VOC emission inventory be adjusted to account for reductions that would occur from the pre-1990 FMVCP and RVP programs. First, the State calculated the non-creditable reductions from the pre-1990 FMVCP and RVP programs and subtracted those emissions from the 1990 ROP inventory. This yields the 1990 ''adjusted base year inventory.'' The target level is the 1990 ROP inventory less the sum of the following:

1. 15% of the adjusted base year inventory,

2. The sum of the non-creditable reductions from the pre-1990 FMVCP and RVP programs,

3. And reductions resulting from post-1990 correctons to existing motor vehicle inspection and maintenance (I/M) programs or corrections to RACT rules.

There were no post 1990 emission reductions attributed to RACT corrections or I/M corrections in the Baltimore nonattainment area, and the 15% plan correctly claimed zero reductions in the target level calculation. The table below summarizes the calculations for the 1996 VOC target level for the entire Baltimore ozone nonattainment area.

CALCULATION OF REQUIRED REDUCTIONS FOR THE BALTIMORE NONATTAINMENT AREA 15% PLAN (TONS PER DAY)

| | | |
|---|---|---|
| 1 | 1990 ROP Inventory | 346.8 |
| 2 | 1990 Adjusted Base Year Inventory | 307.1 |
| 3 | FMVCP/RVP Adjustment (Line 1 less line 2) | 39.7 |
| 4 | 15% Reduction Requirement = 15% of Adjusted Base Year (.15 x Line 2) | 46.1 |
| 5 | RACT Corrections and I/M Corrections | 0.0 |
| 6 | Total 15% & Non-creditable Reductions (Sum of lines 3, 4, and 5) | 85.8 |
| 7 | Projected Growth 1990 to 1996 | 27.2 |
| 8 | Required Emission Reductions (15% plus growth—line 4 plus line 7) | 73.3 |
| 9 | Total Reductions Claimed in 15% Plan | 76.8 |
| 10 | Target Level (line 1 less line 6) | 261.0 |

The emission reduction required to meet the 15% ROP requirement equals the sum of 15% of the adjusted base year inventory and any reductions necessary to offset emissions growth projected to occur between 1990 and 1996, plus reductions that resulted from corrections to the I/M or VOC RACT rules that were required to be in place before 1990. The target level, line 10 of the table, is the 1990 ROP inventory less the base 15% reduction (line 4 of the table) and less all non-creditable emission reductions (lines 3 and 5 of the table). EPA believes that the target level of 261.0 TPD has been properly calculated in accordance with EPA guidance.

*D. Control Strategies in the 15% Plan*

The specific measures adopted (either through state or federal rules) for the Baltimore nonattainment area are addressed, in detail, in the State's 15% plan. The following is a brief description of each control measure Maryland has claimed credit for in the submitted 15% plan, as well as the results of EPA's review of the use of that strategy towards the Act's 15% ROP requirement.

Reformulated Gasoline (RFG)

Section 211(k) of the Act requires that, beginning January 1, 1995, only RFG be sold or dispensed in ozone nonattainment areas classified as severe or above. Thus, RFG is required in the Baltimore nonattainment area. Gasoline is reformulated to reduce combustion by-products and to produce fewer evaporative emissions. The State claims a reduction of 12.4 TPD from its 1996 projected uncontrolled on-road mobile source emissions, accounting for vehicular and refueling benefits, using the MOBILE5a model to determine the emission benefit. EPA has reviewed the Maryland submittal's calculation of the benefits for this measure and finds that the amount of reduction Maryland claims is creditable, but has not been documented as required by the Act.

In order to address these documentation and modeling issues, as well as the requirements of the National Highway Systems Designation Act (NHSDA), EPA is requiring Maryland to recalculate the mobile source credits for enhanced I/M program, RFG and FMVCP (Tier I). The use of RFG will also result in reduced emissions from off-road engines such as motors for recreational boats and lawn mower engines, commonly used in summer months. The benefits from RFG and Tier I must not be separated out on a tons per day basis for each control measure, but rather all mobile source measures must be included in the 1999 target level calculation run. This remodeling assessment will therefore remove any

potential for ''double-counting'' the credit accorded to individual mobile source measures. While EPA will require Maryland to document and remodel the credits derived from RFG under the remodeling condition cited in the enhanced I/M section of this rule, EPA has no reason to dispute at this time that the 12.4 TPD emission benefit claimed in Maryland's 15% plan from the RFG program is creditable.

Off-Road Use of Reformulated Gasoline

Maryland claims a reduction of 1.4 TPD from its 1996 projected uncontrolled off-road mobile source emissions. Maryland used guidance provided on August 18, 1993 by EPA's Office of Mobile Sources on the VOC emission benefits for non-road equipment which are in a nonattainment area that uses Federal Phase I RFG. Maryland has correctly used the guidance to quantify the VOC emission reductions for this measure. EPA had determined that the 1.4 TPD emission benefit claimed in Maryland's 15% plan is creditable.

Post 1990 Federal Motor Vehicle Control Program (Tier I)

EPA promulgated a national rule establishing ''new car'' standards for 1994 and newer model year light-duty vehicles and light-duty trucks on June 5, 1991 (56 FR 25724). Since the standards were adopted after the Act was amended in 1990, the resulting emission reductions are creditable toward the 15% reduction goal. Due to the three-year phase-in period for this program and the associated benefits stemming from fleet turnover, the reductions prior to 1996 are somewhat limited. Maryland claimed a reduction of 1.4 TPD from the Tier I using the MOBILE5a model to determine the emission benefits. EPA has reviewed the methodology used by Maryland in calculating the benefits for this measure and finds that the amount of reduction Maryland claims is creditable, but has not been documented as required by the Act.

In order to address these documentation and modeling issues, as well as the requirements of the NHSDA, EPA is requiring Maryland to recalculate the mobile source credits for enhanced I/M, RFG, and Tier I. The benefits from RFG and Tier I must not be separated out on a tons per day basis for each control measure, but rather all mobile source measures must be included in the 1999 target level calculation run. This remodeling assessment will, therefore, remove any potential for ''double-counting'' the credit accorded to individual mobile source measures. While EPA will require Maryland to remodel the credits derived from Tier I under the remodeling condition cited in the enhanced I/M section of this rule, EPA has no reason to dispute at this time that the 1.4 TPD emission benefit claimed by Maryland in its 15% plan from Tier I is creditable.

Architectural and Industrial Maintenance Coatings (AIM)

In EPA's most recent policy memorandum on AIM credits, ''Update on the Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coatings Rule'', dated March 7, 1996, EPA allowed states to claim a 20% reduction of total AIM emissions from the national rule. Maryland claimed a 20% reduction in AIM emissions under its 15% plan, which is a reduction of 6.5 TPD from their 1996 projected uncontrolled AIM coating emissions. In the March 7, 1996 memorandum, EPA allowed states to continue to claim a 20% reduction of total AIM emissions from the national rule in their 15% plans although the emission reductions are not expected to occur until April 1997. As a result of legal challenges to the proposed national rule, EPA has negotiated a compliance date of no earlier than January 1, 1998. Even though the promulgation date for this rule is now months beyond the end of 1996, it is EPA's intention to still allow the amount of credit specified for the AIM rule in the memorandum in states' 15% plans. EPA believes this is justified in light of the significant delays in proposing the rule. Furthermore, EPA believes the State has a significantly limited ability to effectuate reductions from this measure through the state adoption process any sooner than EPA's rulemaking schedule. If this final rule does not provide the amount of credit that Maryland claims in its 15% plan, the State is responsible for developing measures to make up the shortfall.

Use of emissions reductions from EPA's expected national AIM rule is acceptable towards the 15% plan target. Therefore, the 6.5 TPD in Maryland's 15% plan are creditable.

Consumer and Commercial Products

Section 183(e) of the Act required EPA to conduct a study of VOC emissions from consumer and commercial products and to compile a regulatory priority list. EPA is then required to regulate those categories that account for 80% of the consumer product emissions in ozone nonattainment areas. Group I of EPA's regulatory schedule lists 24 categories of consumer products to be regulated by national rule, including personal, household, and automotive products. EPA intends to issue a final rule covering these products in the near future. EPA policy allows states to claim up to a 20% reduction of total consumer product emissions towards the ROP requirement. However, Maryland claimed a 7.5% reduction or the equivalent reduction of 1.7 TPD from its 1996 projected uncontrolled consumer and commercial products emissions in its 15% plan, based on a 1992 California Air Resources Board (CARB) technical support document entitled ''Proposed Amendments to the Statewide Regulation to Reduce VOC Emissions from Consumer Products.''

For the reasons discussed above under the AIM rule regarding delayed implementation of national rules, the EPA believes the 1.7 TPD projected reduction in Maryland's 15% plan is creditable. If this final rule does not provide the amount of credit that Maryland claims in its 15% plan, the State is responsible for developing measures to make up the shortfall.

Autobody Refinishing

In a November 29, 1994 memorandum, ''Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule,'' EPA set forth policy on the creditable reductions to be assumed from the national rule for autobody refinishing. That memorandum allowed for a 37% reduction from current emissions with an assumption of 100% rule effectiveness (presuming the coating application instructions were being followed). However, Maryland has adopted a state autobody refinishing regulation, approved by EPA in a separate rulemaking action. This state rule allows for a 45% reduction from current emissions in the 15% plans, according to a recommendation by the State and Territorial Air Pollution Program Administrators (STAPPA) in a guidance document entitled Meeting the 15-Percent Rate of Progress Requirements Under the Clean Air Act: A Menu of Options. From this regulation, Maryland claimed a reduction of 5.0 TPD from their 1996 projected uncontrolled autobody emissions in its 15% plan. EPA has determined that this 5.0 TPD reduction claimed in Maryland's 15% plan for the Baltimore area is creditable toward the 15% ROP requirement. If this final rule does not provide the amount of credit that Maryland claims in its 15% plan,

the State is responsible for developing measures to make up the shortfall.

Stage II Vapor Recovery

Section 182(b)(3) of the Act requires all owners and operators of gasoline dispensing systems in moderate and above ozone nonattainment areas to install and operate a system for gasoline vapor recovery (known as Stage II) of emissions from the fueling of motor vehicles. Stage II vapor recovery is a control measure which substantially reduces the VOC emissions during the refueling of motor vehicles at gasoline service stations. The Stage II vapor recovery nozzles at gasoline pumps capture the gasoline-rich vapors displaced by liquid fuel during the refueling process. On November 15, 1992, Maryland submitted a revision to its SIP to require the Stage II controls in all counties of the Baltimore ozone nonattainment area.

Maryland had no pre-1990 Stage II controls in the Baltimore nonattainment area. Stage II is a creditable measure in counties where these controls were not required before 1990. Maryland estimates that the control measure will result in a reduction of 7.4 TPD. The Maryland 15% plan states that Maryland used the MOBILE5a model in conjunction with gasoline throughput to determine the creditable emission reduction. For this mobile source measure, the State submitted limited documentation with regard to the MOBILE5a runs and calculations done to determine credit. However, EPA has no reason to dispute Maryland's methodology. This measure and the 7.4 TPD is creditable toward the 15% requirement of Maryland's 15% plan.

Seasonal Restrictions on Open Burning

Maryland has amended COMAR 26.11.07 to institute a ban on open burning during the peak ozone season in Maryland's severe and serious ozone nonattainment areas. Maryland considers the months of June, July, and August the peak ozone season, because that is when ambient levels of ozone in Maryland are usually the highest. This ban on open burning affecting the Baltimore severe ozone nonattainment area is a measure to reduce VOC emissions. During the peak ozone season, the practice of burning for the disposal of brush and yard waste as a method of land clearing will be banned. These revisions were adopted on May 1, 1995, and effective on May 22, 1995. Maryland submitted these revisions to EPA as a SIP revision on July 12, 1995. EPA's direct final approval of these revisions into the Maryland SIP was signed on January 31, 1997.

The following open fires are not prohibited, as long as all reasonable means are used to minimize smoke:

1. For cooking of food on noncommercial property (cook outs),
2. For recreational purposes (camp fires),
3. For prevention of fire hazards that cannot be abated by any other means,
4. For the instruction of fire fighters or the testing of fire fighter training systems fueled by propane or natural gas,
5. For protection of health & safety when disposal of hazardous waste is not possible by any other means,
6. For burning pest infested crops or agricultural burning for animal disease control,
7. For good forest resource management practices,
8. For the burning of excessive lodging for the purpose of re-cropping, and
9. For testing fire fighting training systems.

This ban is in effect during the ''peak ozone season''. During the remainder of the year (September 1–May 31) Maryland's existing open fire regulations apply. Current regulations require that a permit be obtained before open burning can take place.

The State of Maryland claimed 3.85 TPD emissions reductions from the seasonal open burning ban in the Baltimore area. Maryland assumed 100% rule effectiveness to attain this emission reduction. However, the State did not submit any documentation substantiating why the default value of 80% rule effectiveness should not be applied to this measure.

Rule effectiveness is an estimate of how effectively a rule is implemented, and is used as a percentage of total available reductions from a control measure. Pursuant to EPA guidance, control measures are subject to a rule effectiveness adjustment, unless clearly documented reasons as to why they should not be subjected are included in the submittal. Therefore, the State of Maryland can claim 3.1 TPD emissions reductions from the seasonal open burning ban (80% of 3.85 TPD). EPA has determined that this emission benefit is creditable to the Baltimore nonattainment area 15% plan.

Lithographic Printing

This measure regulates emissions from formerly uncontrolled small lithographic printing operations, such as heatset web, non-heatset web, non-heatset sheet-fed, and newspaper non-heatset web operations. VOCs are emitted from the inks, fountain solutions and solvents used to clean the printing presses. This measure is modeled on EPA's draft documents ''Offset Lithographic Printing Control Techniques Guideline'' and ''Alternative Control Techniques Document: Offset Lithographic Printing'' announced in the **Federal Register**, November 8, 1993.

Maryland claimed an emission reduction from lithographic printing sources of 0.5 TPD for the Baltimore nonattainment area. EPA is approving Maryland's lithographic printing regulation in a separate rulemaking action. Therefore, the 0.5 TPD reduction claimed in the 15% plan for the Baltimore nonattainment area from sheet-fed and web lithographic printing operations is creditable toward the 15% ROP requirement.

Surface Cleaning Operations

This measure amends the Maryland regulation for surface cleaning (also called cold cleaning and degreasing) devices and operations for area sources and requires more stringent emission control requirements and enlarges the field of applicable sources. Maryland's 1996 projection year inventory in this source category is 11.0 TPD. Maryland estimates that this rule would result in a 50% reduction of emissions resulting in 5.5 TPD reduction credits. EPA is approving Maryland's surface cleaning and degreasing regulation in a separate rulemaking action. Therefore, the 5.5 TPD reduction claimed in the 15% plan for the Baltimore nonattainment area from surface cleaning and degreasing is creditable toward the 15% ROP requirement.

Reasonably Available Control Technology (RACT)

Section 184(b)(1)(B) of the Act requires areas in the Ozone Transport Region (OTR) to implement RACT regulations for all VOC sources that have the potential to emit 50 TPY or more. In addition, section 182(b)(2) requires states to implement RACT regulations on all ''major'' sources of VOC in moderate or above ozone nonattainment areas. Major VOC sources are those with the potential to emit at least 100 TPY in moderate areas, 50 TPY in serious areas, and 25 TPY in severe areas. Because Maryland is in the OTR, the State is required to implement RACT regulations for all sources with the potential to emit 50 TPY or more, throughout the state. Furthermore, in Maryland's severe ozone nonattainment areas, RACT is required for all VOC sources with the potential to emit 25 TPY or more.

Several of the regulations submitted by Maryland on July 12, 1995 establish

RACT for major VOC sources, and therefore fulfill, in part, Maryland's obligations under both section 182 of the Act and its generic RACT regulation. These RACT regulations, for expandable polystyrene products, yeast production, bakeries, and screen printing, have been approved into the Maryland SIP in a separate rulemaking action. EPA has determined that the 1.4 TPD reduction claimed by Maryland from RACT on these four categories is creditable toward the 15% ROP requirement for the Baltimore nonattainment area.

Federal Air Toxics

This measure addresses sources required to comply with federal air toxics requirements that have or will achieve VOC reductions between 1990 and 1996. Federal rules that may achieve these reductions include National Emission Standards for Hazardous Air Pollutants (NESHAP) for vinyl chloride production plants and benzene emissions from equipment leaks, benzene storage vessels, coke by-product recovery plants, benzene transfer operations, and waste operations, or maximum available control technology (MACT) standards for coke ovens, dry cleaners, and chromium electroplating.

Maryland claimed 0.4 TPD from this control measure. Credit is allowable from MACT and NESHAP; thus, 0.4 TPD from federal air toxics is fully creditable toward Maryland's 15% plan for the Baltimore nonattainment area.

Enhanced Rule Compliance

This measure increases the effectiveness of existing regulations by enhancing rule compliance through increased or enhanced inspections and other enforcement activities. In the 15% plan, rule effectiveness (RE) improvements are targeted at tank truck unloading operations at gasoline dispensing facilities and at specified bulk terminals.

RE reflects the ability of a regulatory program to achieve all the emission reductions that could have been achieved by full compliance at all times. The precise degree to which all affected sources comply with a particular regulation is almost impossible to determine unless emissions are continuously monitored at all times or unless the reductions are achieved through an irreversible process change. Measures for improving RE include activities undertaken by the regulating agency to improve inspections and/or deter violations, or activities undertaken by the sources. For the regulating agency the improvements can include enhanced training of inspectors, increased inspection frequency or scope, activities such as periodic workshops to inform sources of their obligations, and increased publicity of the issuance of notices of violation and fines. Measures imposed upon sources include improved operator training, improved recordkeeping such as daily operation and maintenance logs, increased testing frequencies and improved written operation and maintenance procedures. (RE can also be improved when underlying legislation increased after 1990 the severity of civil and criminal sanctions under the relevant state's laws.) To estimate the affect on RE a particular improvement will have the methodology of the matrix in Appendix C to the guidance document ''Rule Effectiveness: Integration of Inventory, Compliance and Assessment Applications'' (EPA–452/R–94–001, January 1994) must be used. The state must also commit to perform a Stationary Source Compliance Division (SSCD) Protocol Study or perform in lieu of the SSCD protocol the study specified in the memorandum from Susan E. Bromm, Director, Chemical/ Commercial and Municipal Division, Office of Compliance, entitled ''Transmittal of Rule Effectiveness Protocol for the 1996 Demonstration'' dated December 22, 1994.

Maryland has claimed a 6.3 TPD reduction from enhanced rule compliance for the Baltimore nonattainment area. This is enforceable under the state approved Title V program, but EPA cannot credit this claim because the State needs to submit this control measure as part of the State Implementation Plan (SIP). Also, Maryland must submit to EPA further documentation of its claims, i.e., source-specific rule effectiveness worksheets to support enhanced rule compliance claims in Maryland's 15% plan for the Baltimore area.

State Air Toxics

This measure addresses stationary sources that are covered by Maryland's air toxics regulations that have achieved VOC reductions above and beyond current federally enforceable limits. In general, Maryland's air toxics regulations cover any source required to obtain a permit to construct or an annually renewed state permit to operate. Maryland claimed 0.9 TPD from state air toxics in the Baltimore nonattainment area. This measure is creditable and enforceable under the State's Title V program.

Enhanced Vehicle Inspection & Maintenance (I/M) Program

Most of the 15% SIPs originally submitted to the EPA contained enhanced I/M programs because this program achieves more VOC emission reductions than most, if not all other, control strategies. However, because most states experienced substantial difficulties with these enhanced I/M programs, only a few states are currently actually testing cars using their original enhanced I/M protocols.

In the case of the Baltimore nonattainment area, Maryland has submitted a 15% SIP that would achieve the amount of reductions needed from I/M by November 1999. On March 27, 1996, Maryland submitted an enhanced I/M SIP revision that calls for I/M program implementation in counties in the Baltimore nonattainment area. The Maryland enhanced I/M program is a biennial program with implementation required to begin no later than November 15, 1997. The enhanced I/M submittal consists of its enabling legislation, a description of the I/M program, proposed regulations, and a good faith estimate that includes the State's basis in fact for emission reductions claimed from the I/M program. On October 31, 1996, EPA proposed conditional approval of the March 27, 1996 enhanced I/M SIP revision (61 FR 56183).

The proposed conditional approval listed numerous minor and major deficiencies, and required Maryland to submit a letter within 30 days committing to correct the deficiencies. Maryland submitted a letter dated December 23, 1996 (through an extension of the 30 days to January 2, 1997 (61 FR 64307, December 4, 1996)) committing to meet the requirements of full approval outlined in the October 31, 1996 proposed rulemaking. Full approval of Maryland's 15% plan is contingent on Maryland satisfying the conditions of the conditional approval of its enhanced I/M SIP by a date certain within one year of final conditional approval, and receiving final full EPA approval of its enhanced I/M program. If Maryland corrects the deficiencies by that date and submits a new enhanced I/M SIP revision, EPA will conduct rulemaking to approve that revision. If Maryland fails to fulfill a condition required for approval, and its I/M program converts to a disapproval, then the conditional approval of Maryland's 15% plan would also convert to a disapproval.

In September 1995, EPA finalized revisions to its enhanced I/M rule allowing states significant flexibility in

designing I/M programs appropriate for their needs (60 FR 48029). Subsequently, Congress enacted the NHSDA, which provides states with additional flexibility in determining the design of enhanced I/M programs. The substantial amount of time needed by states to re-design enhanced I/M programs in accordance with the guidance contained within the NHSDA, secure state legislative approval when necessary, and set up the infrastructure to perform the testing program has precluded states that revise their enhanced I/M programs from obtaining emission reductions from such revised programs by November 15, 1996.

Given the heavy reliance by many states upon enhanced I/M programs to help achieve the 15% VOC emissions reduction required under section 182(b)(1) of the Act, the recent NHSDA and regulatory changes regarding enhanced I/M programs, EPA has determined that that it is no longer possible for many states to achieve the portion of the 15% reductions that are attributed to I/M by November 15, 1996. Under these circumstances, disapproval of the 15% SIPs would serve no purpose. Consequently, under certain circumstances, EPA will propose to allow states that pursue re-design of enhanced I/M programs to receive emission reduction credit from these programs within their 15% plans, even though the emissions reductions from the I/M program will occur after November 15, 1996. The provisions for crediting reductions for enhanced I/M programs is contained in two documents: ''Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation,'' note from John Seitz and Margo Oge, dated August 13, 1996, and ''Modelling 15 Percent VOC Reductions from I/M in 1999—Supplemental Guidance'', memorandum from Gay MacGregor and Sally Shaver, dated December 23, 1996.

Specifically, EPA is proposing approval of 15% SIPs if the emissions reductions from the revised, enhanced I/M programs, as well as from the other 15% SIP measures, will achieve the 15% level as soon after November 15, 1996 as practicable, pursuant to a February 12, 1997 memorandum from John Seitz and Richard Ossias entitled, ''15 Percent VOC SIP Approvals and the ''As Soon As Practicable'' Test''. To make this ''as soon as practicable'' determination, EPA must determine that the SIP contains all VOC control strategies that are practicable for the nonattainment area in question and that meaningfully accelerate the date by which the 15% level is achieved. EPA does not believe that measures meaningfully accelerate the 15% date if they provide only an insignificant amount of reductions.

EPA has examined other potentially available SIP measures to determine if they are practicable for the Baltimore area and if they would meaningfully accelerate the date by which the area reaches the 15% level of reductions. EPA proposes to determine that the SIP does contain the appropriate measures. The TSD for this action contains a discussion of other measures available for 15% plans. Maryland has taken credit for several of these measures (or essentially similar measures), such as RFG, revised surface cleaning rules, etc., in the 15% plan; and taken credit for measures that EPA must promulgate under section 183(e) such as AIM coatings, and a consumer and commercial products rule. Provided below is a tabular summary of this analysis. Measures for which Maryland took credit in the 15% ROP plan are identified in the table below as ''In 15% Plan'' and are not available as a possible alternative to I/M. The other programs that Maryland included in the 15% ROP plan result in only a possible 4.54 TPD reduction and do not deliver, in the aggregate, anything close to the reductions achieved by enhanced I/M.

MARYLAND 15% PLAN—BALTIMORE NONATTAINMENT AREA

| Measures considered | Potential VOC reduction (tons/day) |
|---|---|
| Area Source Measures: | |
| AIM Coatings—Federal Rule | In 15% Plan |
| Wood Products Coating—Reformulation | In 15% Plan |
| Consumer Solvents—Federal Rule | In 15% Plan |
| Solvent Cleaning—Substitution/Equipment | In 15% Plan |
| Graphic Arts—Web Offset Control | 1.10 |
| Autobody Refinishing—ACT control | In 15% Plan |
| Landfills—Federal Rule | In 15% Plan |
| Other Dry Cleaning—SCAQMD 1102 | 0.01 |
| Stage I Enhancement—P/V Vents | 2.31 |
| Stage II—Vapor Recovery | In 15% Plan |
| Nonroad Gasoline—Reformulated Gasoline | In 15% Plan |
| Point Source Measures: | |
| Other Dry Cleaning—SCAQMD 1102 | 0.08 |
| Landfills—National rule, early implementation | In 15% Plan |
| Stage I—P/V Vents | 0.11 |
| Flexographic Printing—MACT early implementation | In 15% Plan |
| Gravure Printing—MACT early implementation | 0.93 |
| Web Offset Lithography—ACT control | In 15% Plan |
| Non-mandated On-Road Mobile Measures: | |
| Reformulated Gasoline | In 15% Plan |
| I/M Reductions: | |
| High Enhanced in 15% Plan | In 15% Plan |

EPA has determined that the enhanced I/M program is the only measure that will significantly accelerate the date by which the 15% requirement will be achieved. EPA proposes to determine that Maryland's 15% plan does contain all measures, including enhanced I/M, that achieves reductions as soon as practicable. EPA proposes to allow enhanced I/M reductions which occur out until November 15, 1999 to count toward the

15% emission reduction level for the 15% plan, since in doing so, the state will reach a 15% VOC reduction as soon as practicable.

Maryland claimed a total of 16.8 TPD credit for this measure. In its July 12, 1995 15% plan submittal, Maryland evaluated the I/M program using EPA's MOBILE5a model with assumptions that called for implementation of a centralized, IM240 test with pressure and purge testing, and a program start date of January 1, 1995. Since the time of the July 12, 1995 submittal, Maryland has revised its enhanced I/M program and submitted the redesigned program to EPA.

Maryland's I/M program is a biennial, centralized program network using IM240 testing equipment scheduled to begin testing by November 1997. Maryland has designed its centralized network of testing stations to accommodate biennial testing. EPA has determined that Maryland cannot accelerate the reductions by initially requiring annual testing because:

1. Without additional testing stations other requirements of the enhanced I/M rule relating to motorist convenience would suffer. Motorist convenience is one important aspect that affects public acceptance and effectiveness of the I/M program.

2. Additional infrastructure changes (e.g. more testing equipment, enlarging or building new testing stations, and the hiring and training of additional inspectors) to the enhanced I/M program would not come on-line in time to afford a substantial increase in the amount of reductions realized before November 15, 1999.

3. The cost effectiveness of the program would be adversely affected because the additional costs would not result in a corresponding amount of reductions.

EPA proposes to determine that the I/M program for the Baltimore area does achieve reductions from enhanced I/M as soon as practicable.

Because Maryland's revised I/M program is designed to meet EPA's high-enhanced performance standard and will achieve essentially the same number of testing cycles between start-up and November 1999 as that modeled in the 15% plan, EPA believes that Maryland's program will achieve 16.8 TPD of reductions by 1997. However, EPA believes that Maryland is best able to perform the definitive determination because Maryland will use the same highway network model that was used to determine the 1990 base year inventory and the 1996 on-road VOC emissions budget used for transportation conformity purposes. (The same highway network model is also used for conformity determinations.) EPA believes it would be appropriate to condition approval of the 15% ROP upon Maryland remodeling the I/M benefits to reflect all relevant parameters (start date, network type, test types for exhaust and purge/pressure testing, waiver rates, cut points, etc.) of the revised, enhanced I/M program and show the I/M reductions needed to make the 15% reduction are achieved by no later than November 15, 1999. In performing this demonstration, the State should ensure that Tier I and RFG benefits are considered. Benefits should not be separated out on a tons per day basis for each control measure, but rather all mobile source measures should be evaluated in the 1999 ''target level'', as defined in the December 23, 1996 memorandum, calculation run. EPA would further condition that such modeling would be done in accordance with EPA guidance. EPA's guidance for remodeling I/M for 15% plans includes: (1) A note to the Regional Division Directors from John Seitz and Margo Oge dated August 13, 1996 entitled ''Date by which States Need to Achieve all the Reductions Needed for the 15% Plan from I/M Guidance for Recalculation,'' and (2) a joint memorandum from Gay MacGregor and Sally Shaver dated December 23, 1996 entitled ''Modeling 15% VOC Reduction(s) from I/M in 1999—Supplemental Guidance.''

As it relates to Maryland's I/M program, EPA proposes a conditional approval of the 16.8 TPD reduction from enhanced I/M in the Baltimore nonattainment area, provided Maryland meets the conditions of the October 31, 1996 conditional approval of the enhanced I/M program; receives full EPA approval of its enhanced I/M program; and remodels it's enhanced I/M program using the appropriate, updated parameters (e.g., appropriate start date, etc.).

Further, EPA makes this conditional approval of the 15% plan contingent upon Maryland maintaining a mandatory I/M program. EPA will not credit any reductions toward the 15% ROP requirement from a voluntary enhanced I/M program. Since the State's 15% plan claims 16.8 TPD from the implementation of a mandatory, centralized, IM240 plan, any changes to I/M which would render the program voluntary or discontinued would cause a shortfall of credits in the 15% reduction goal. EPA is, therefore, proposing in the alternative to convert this action automatically to a proposed disapproval should the State make the I/M a voluntary measure.

*E. Emission Control Measures Not Evaluated*

EPA is not taking action at this time on the following control measures contained in the Maryland 15% Plan submitted July 12, 1995:

Municipal Landfill Emissions

This control measure is a state control program regulating VOC emissions from municipal landfills, utilizing landfill gas capture and destruction systems. Maryland estimated that this rule would result in a reduction of 1.2 TPD. EPA is not taking action on this control strategy in the July 12, 1995 Maryland 15% plan submittal, nor crediting the 1.2 TPD reduction toward the 15% ROP requirement in this rulemaking.

Pesticide Reformulation

This measure requires the use of low-VOC content pesticides for consumer, commercial and/or agricultural use. Maryland claims that this measure results in a reduction of 2.9 TPD by applying a 40% overall reduction to the 1996 base year projection emissions for pesticide application. EPA is not taking action on this control strategy in the July 12, 1995 Maryland 15% plan submittal, nor crediting the 2.9 TPD reduction toward the 15% ROP requirement in this rulemaking.

*F. Reasonable Further Progress*

The table below summarizes the proposed creditable measures and those measures which EPA is not taking action on in this rulemaking from Maryland's 15% plan for the Baltimore nonattainment area.

SUMMARY OF CREDITABLE EMISSION REDUCTIONS IN THE STATE OF MARYLAND'S 15% PLAN FOR THE BALTIMORE SEVERE OZONE NONATTAINMENT AREA (TONS/DAY)

| | |
|---|---|
| Creditable Reductions: | |
| FMVCP Tier I | 1.2 |
| Reformulated Gasoline | 13.8 |
| Autobody Refinishing | 5.0 |
| AIM | 6.5 |

SUMMARY OF CREDITABLE EMISSION REDUCTIONS IN THE STATE OF MARYLAND'S 15% PLAN FOR THE BALTIMORE SEVERE OZONE NONATTAINMENT AREA (TONS/DAY)—Continued

| | |
|---|---|
| Federal Air Toxics | 0.4 |
| State Air Toxics | 0.9 |
| Consumer and Commercial Products | 1.7 |
| Enhanced Rule Compliance | 6.3 |
| Seasonal Open Burning Restrictions | 3.1 |
| Lithographic Printing | 0.5 |
| RACT | 1.4 |
| Surface Cleaning and Degreasing | 5.5 |
| Stage II Vapor Recovery | 7.4 |
| Enhanced Inspection & Maintenance | 16.8 |
| Total Creditable | 70.5 |
| Measures EPA is not Taking Action on in this Rulemaking: | |
| Municipal Landfills | 1.2 |
| Pesticide Reformulation | 2.9 |
| Total No Action | 4.1 |

EPA has evaluated the July 12, 1995 Maryland submittal for consistency with the Act, applicable EPA regulations, and EPA policy. On its face, Maryland's 15% plan achieves the required 15% VOC emission reduction to meet the 15% ROP requirements of section 182(b)(1) of the Act. However, there are measures included in the Maryland 15% plan, which may be creditable towards the Act requirement but which are insufficiently documented for EPA to take action on at this time. While the amount of creditable reductions for certain control measures has not been adequately documented to qualify for Clean Air Act approval, EPA has determined that the submittal for Maryland contains enough of the required structure to warrant conditional approval. Furthermore, the July 12, 1995 submittal strengthens the SIP.

Based on EPA's preliminary review of the draft revised 15% plan for the Baltimore nonattainment area, sent to EPA for comment by the State on April 16, 1997, EPA believes that the amount of VOC reduction that Maryland needs to satisfy the 15% ROP requirement in the Baltimore area may be lower than the 70.5 TPD accounted for with creditable measures in the July 12, 1995 submittal. The draft revised plan includes revised information for the 1990 base year inventory and actual growth between 1990 and 1996, as opposed to projected growth. The effect of these revisions may lower the amount of creditable emission reductions Maryland needs to achieve the 15% ROP requirement.

### III. Proposed Action

In light of the above deficiencies and to conform with EPA's proposed conditional approval of Maryland's I/M program, EPA is proposing conditional approval of this SIP revision under section 110(k)(4) of the Act.

EPA is proposing conditional approval of the Maryland 15% plan for the Baltimore nonattainment area if Maryland commits, in writing, within 30 days of EPA's proposal to correct the deficiencies identified in this rulemaking. These conditions are described below. If the State does not make the required written commitment to EPA within 30 days, EPA is proposing in the alternative to disapprove the 15% plan SIP revision. If the State does make a timely commitment, but the conditions are not met by the specified date within one year, EPA is proposing that the rulemaking will convert to a final disapproval. EPA would notify Maryland by letter that the conditions have not been met and that the conditional approval of the 15% plan has converted to a disapproval. Each of the conditions must be fulfilled by Maryland and submitted to EPA as an amendment to the SIP. If Maryland corrects the deficiencies within one year of conditional approval, and submits a revised 15% plan as a SIP revision, EPA will conduct rulemaking to fully approve the revision. In order to make this 15% plan approvable, Maryland must fulfill the following conditions by no later than 12 months after EPA's final conditional approval:

1. Maryland's 15% plan calculations must reflect the EPA approved 1990 base year emissions inventory (61 FR 50715, September 27, 1996).

2. Maryland must meet the conditions listed in the October 31, 1996 conditional I/M rulemaking notice, including its commitment to remodel the I/M reductions using the following two EPA guidance memos: ''Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation,'' note from John Seitz and Margo Oge dated August 13, 1996, and ''Modeling 15% VOC Reductions from I/M in 1999—Supplemental Guidance,'' from Gay MacGregor and Sally Shaver dated December 23, 1996.

3. Maryland must remodel to determine affirmatively the creditable reductions from RFG and Tier I in accordance with EPA guidance.

4. Maryland must submit a SIP revision amending the 15% plan with a determination using appropriate documentation methodologies and credit calculations that the 70.5 TPD reduction, supported through creditable emission measures in the submittal, satisfies Maryland's 15% ROP requirement for the Baltimore area.

After making all the necessary corrections to establish the creditability of chosen control measures, Maryland must demonstrate that 15% emission reduction is obtained in the Baltimore nonattainment area as required by section 182(b)(1) of the Act and in accordance with EPA's policies and guidance.

Further, EPA makes this conditional approval of the 15% plan contingent upon Maryland maintaining a mandatory I/M program. EPA will not credit any reductions toward the 15% ROP requirement from a voluntary enhanced I/M program. Since the State's 15% plan claims 16.8 TPD from the implementation of a mandatory, centralized, IM240 plan, any changes to I/M which would render the program voluntary or discontinued would cause a shortfall of credits in the 15% reduction goal. EPA is, therefore, proposing in the alternative to convert this action automatically to a proposed

disapproval should the State make the enhanced I/M program a voluntary measure.

EPA and the Maryland Department of the Environment have worked closely since the July 1995 submittal to resolve all the issues necessary to fully approve the 15% plan. Maryland is aware of the above deficiencies and has addressed many of the above-named deficiencies in the draft revised plan. Maryland has stated that it intends to submit additional information to address all deficiencies within the 15% plan. Therefore, while some deficiencies currently remain in the 15% plan, EPA believes that these issues will be resolved no later than 12 months after EPA's final conditional approval. EPA will consider all information submitted as a supplement or amendment to the July 1995 submittal prior to any final rulemaking action.

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

### IV. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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, 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.

Conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action would not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

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 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 informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed 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. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Regional Administrator's decision to approve or disapprove the SIP revision pertaining to the Maryland 15% plan for the Baltimore area will be based on whether it meets the requirements of section 110(a)(2)(a)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone, Volatile organic compounds.

Dated: July 22, 1997.

**Thomas Voltaggio,**

*Acting Regional Administrator, Region III.*

[FR Doc. 97–20575 Filed 8–4–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[TN–150–9711b; FRL–5866–2]**

## Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to Maintenance Plan for Knox County, TN

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State implementation plan (SIP) revision submitted by the State of Tennessee for the purpose of revising the Ozone Maintenance plan and emission projections for Knox County. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** To be considered, comments must be received by September 4, 1997.

**ADDRESSES:** Written comments on this action should be addressed to Benjamin Franco at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file TN150–01–9711. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.
Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Benjamin Franco, (404) 562–9039.
Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. Telephone: (615)-532–0554.
Knox County Department of Air Pollution Control, City-County Building, Suite 339, 400 West Main Street, Knoxville, Tennessee, 37902. Telephone: (615) 521–2488.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Franco at 404/562–9039.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: July 9, 1997.

**Michael V. Payton,**

*Acting Regional Administrator.*

[FR Doc. 97–20577 Filed 8–4–97; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTTION AGENCY

## 40 CFR Part 52

**[CO–001–0017 and CO–001–0018; FRL–5869–4]**

## Clean Air Act Approval and Promulgation of the Denver, Colorado Mobile Source Emissions Budgets for $PM_{10}$ and $NO_X$

**AGENCY:** Evironmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is requesting additional comments on certain aspects of the State Implementation Plan (SIP) revisions for the Denver $PM_{10}$ and $NO_X$ mobile source emissions budgets that were submitted by the Governor of Colorado. EPA initially proposed approval of the SIP revisions on October 3, 1996 (61 FR 51631). During that rulemaking's public comment period, EPA received several comments. Due to the complexity of the issues, EPA is asking interested parties to submit additional information on two issues. This information may help EPA make a more informed decision on the appropriateness of approving both the $PM_{10}$ and $NO_X$ emissions budget SIPs.

**DATES:** Comments on this request for additional information must be received in writing on or before September 4, 1997.

**ADDRESSES:** Copies of the State's original $PM_{10}$ and $NO_X$ emissions budget SIPs, comments received during the public comment period, and other information are available for inspection during normal business hours at the Environmental Protection Agency, Region VIII, Air Program, 999 18th Street, 3rd Floor, South Terrace, Denver, Colorado 80202–2466.

**FOR FURTHER INFORMATION CONTACT:** Callie Videtich at (303) 312–6434.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On July 18, 1995, and April 22, 1996, the Colorado Governor submitted revisions to the Denver $PM_{10}$ SIP which establish mobile source emissions budgets for $PM_{10}$ and $NO_X$ respectively. These budgets are used under EPA regulations for making transportation related conformity determinations as required by section 176(c) of the Act. EPA's transportation conformity rule provides that these budgets establish a cap on motor vehicle-related emissions which cannot be exceeded by the predicted transportation system emissions in the future unless the cap is amended by the State and approved by EPA as a SIP revision and attainment and maintenance of the standard can be demonstrated.

EPA proposed approval of both emissions budgets on October 3, 1996 (61 FR 51631) along with the Denver $PM_{10}$ SIP. Following a 60 day public comment period, EPA finalized approval of the Denver $PM_{10}$ SIP on April 17, 1997 (62 FR 18716). EPA did not take final action on the emissions budget submittals in order to more thoroughly consider comments received on the proposals during the public comment period.

### II. This Action

Based upon a thorough review, EPA has concluded that additional information is needed in order for EPA to make an informed decision about certain aspects of the SIPs based upon public comments responding to our proposed approval of the $PM_{10}$ and $NO_X$ emissions budgets. EPA is seeking additional information on the two issues outlined below.

1. It appears to EPA that the Colorado legislature, through Senate Bill 95–110 (codified at section 25–7–105(1)(a)(III), C.R.S.), changed the $PM_{10}$ emissions budgets that the Colorado Air Quality Control Commission (AQCC) had adopted on February 16, 1995. EPA wishes to take comment on whether the $PM_{10}$ budgets that were ultimately submitted to EPA for approval were adopted after reasonable notice and public hearing as required by section 110 of the Clean Air Act (CAA). Section 110(a)(2) of the CAA provides that ''[e]ach implementation plan submitted by a State under this Act shall be adopted by the State after reasonable notice and public hearing.'' Robert Yuhnke, on behalf of COPIRG, Colorado Environmental Coalition, Citizens for Balanced Transportation, American Lung Association of Colorado, Environmental Defense Fund, and Ms. Stephanie Mines, and Frank Johnson, on behalf of the Colorado Attorney General's Office, have submitted information that touches on this question. Their letters may be examined at the address listed above. EPA wishes to obtain further comment on this issue. In particular, EPA is concerned that the legislative action did not meet the CAA's requirements for notice and public hearing and that no subsequent public hearing was held before the AQCC. The Colorado Attorney General's Office has suggested that hearings held before the AQCC in September and October 1994, and in February 1995, were adequate to satisfy the CAA's hearing requirement, and that there is no requirement that a hearing be held at every step in the State review process. It has also indicated that the State legislative process is an open and public process and that the legislators are accountable to the electorate.

2. Commentors were concerned that the budgets do not demonstrate attainment considering growth in non-mobile sources, and that the adopted $NO_X$ budget of 119.4 tons per day was not consistent with the $NO_X$ inventory of 102.7 tons per day used in the maintenance demonstration. (In the following discussion, EPA uses the terms ''mobile source'' and ''mobile source emissions'' to mean ''motor vehicle'' and ''motor vehicle emissions,'' consistent with the State's submittal. Neither the State's budget submittal nor EPA's conformity rule regulate emissions from non-road mobile sources.)

The Regional Air Quality Council's(RAQC's) proposal to the AQCC to increase the emissions budget was based on an analysis showing that the Denver modeling region could tolerate mobile source $PM_{10}$ emissions of 221 tons per day in 2015 before a violation of the $PM_{10}$ standard would occur. (This analysis was not submitted at the time the budgets were submitted to EPA, but was referenced in

proceedings before the RAQC and the AQCC in 1994 and was provided by the RAQC on April 23, 1997.) By contrast, the attainment and maintenance demonstrations are based on emissions levels of 41 and 44 tons per day, respectively. The RAQC defined the difference between 44 tons per day and 221 tons per day (i.e., 177 tons) as a ''safety margin'' in emissions and assigned 16 tons of this safety margin to mobile source $PM_{10}$ (i.e., raised the SIP's budget to 60 tons per day) in order to facilitate future conformity determinations by the Denver Regional Council of Governments (DRCOG). The RAQC and the State justified the increase of the budget from 44 to 60 tons by noting that this increase represented only a small portion of the available safety margin. The RAQC's analysis assumed 2015 emissions levels of all non-mobile sources, and assumed zero $NO_X$ emissions from mobile sources (i.e., that all emissions were direct $PM_{10}$ emissions).

The RAQC's analysis is strictly a mathematical analysis of the maximum level of emissions that could theoretically be accommodated in each grid in the modeling domain; it is not an analysis of any particular projected growth scenario for Denver. The analysis assumes equal levels of emissions in each grid of the modeling domain, from downtown Denver to rural outlying portions of the domain. Although the safety margin provision in Section 93.132(b) of the conformity rule applies only to existing adopted SIPs which contained a built-in safety margin, section 93.132(a) clearly envisions cases in which a SIP quantifies a safety margin and explicitly assigns some or all of it to the mobile source budget. This general provision applies to situations where a state reanalyzes a SIP to quantify and assign the safety margin.

As noted above, the RAQC's analysis accounts for growth in non-mobile sources of emissions to 2015 levels but does not account for mobile source $NO_X$ (all mobile source emissions are treated as $PM_{10}$ emissions). To quantify the impact of this omission, EPA reviewed documents related to the attainment demonstration and found that an increase of 10.4 tons per day of $NO_X$ would lead to a 1.0μg/m3 increase in $PM_{10}$ concentrations (source: July 7, 1994 and February 8, 1995 Kevin Briggs memoranda). Thus, the adopted budget of 119.4 tons per day of $NO_X$ would equate to approximately 22 tons per day of $PM_{10}$. Subtracting this 22 tons from the RAQC's original 221 ton budget, a 199 ton $PM_{10}$ budget along with a 119.4 ton $NO_X$ budget would still provide for attainment of the NAAQS. However, the State has only revised the SIP to establish a 60 ton $PM_{10}$ budget and a 119.4 ton $NO_X$ budget. Thus, $NO_X$ emissions of 119.4 tons per day can be easily by accommodated within the 177 ton $PM_{10}$ safety margin identified by the RAQC and the State.

The fact that the 119.4 ton per day $NO_X$ budget can be accommodated within the safety margin identified by the RAQC is one reason that EPA is not concerned that this budget is inconsistent with the SIP's 1998 maintenance demonstration budget of 102.7 tons per day. The other reason is the SIP's requirement that each conformity determination must include a modeling analysis demonstrating attainment of the $PM_{10}$ NAAQS (discussed below). Even though the adopted $NO_X$ budget is higher than the inventory used in the maintenance demonstration, DRCOG's transportation plans and transportation improvement programs (TIPs) must still pass a modeling analysis showing attainment of the NAAQS, incorporating the impacts of the 119.4 ton $NO_X$ budget, or the plans and TIPs cannot be found to conform.

EPA believes that the NAAQS are protected by the SIP's requirement for dispersion modeling each time a conformity analysis is conducted. The SIP requires that DRCOG support each conformity determination with a dispersion modeling analysis that shows that each grid in the modeling domain will be in attainment, considering the emissions expected from implementation of the transportation plan or TIP. If the modeling analysis shows that emissions reductions are needed in any locations in order to provide for attainment of the NAAQS, it is incumbent upon DRCOG to identify and ensure implementation of any measures needed to provide those reductions. Thus, DRCOG must satisfy two types of tests to demonstrate conformity: compliance with the 60 ton $PM_{10}$ budget and the 119.4 ton $NO_X$ budget, and a dispersion modeling analysis showing no violations.

The commentors quote the preamble to EPA's November 24, 1993 transportation conformity regulation in objecting to the use of dispersion modeling in conformity determinations. EPA believes that the Act precludes the use of dispersion modeling as a substitute for an emissions budget test. However, EPA's conformity rule did not anticipate situations where a state would wish to require a regional dispersion modeling analysis in addition to an emissions budget test. EPA does not believe that such an application of dispersion modeling is precluded by either the Act or the conformity rule. One commentor suggested that the State adopt subregional emissions budgets in lieu of requiring dispersion modeling; however, as a practical matter, the requirement for dispersion modeling has the same effect as establishing subregional budgets because in either case a certain target level of emissions has to be met in each grid in order for each grid to show attainment.

In fact, the requirement for dispersion modeling in addition to a budget test is arguably more protective of the NAAQS than the budget-only process envisioned by the conformity rule. First, a supplemental requirement for dispersion modeling is certainly more protective than a region-wide budget alone. The commentors argue that subregional budgets for problem grids could be identified. However, establishing fixed subregional budgets through the SIP process would not provide the flexibility to consider future growth patterns. Due to changes in the geographic distribution of growth, NAAQS problems could emerge in areas of the city outside of the area for which subregional budgets had been established, in the geographic area covered only by the region-wide budget. A requirement for dispersion modeling each time a conformity determination is made ensures that these new ''hotspots'' are identified and addressed. A one-time effort to establish subregional budgets would not.

EPA notes that the SIP does not require growth in non-mobile sources to be considered in conducting dispersion modeling for the purposes of conformity determinations. However, the RAQC factored in the future year contribution of non-mobile source emissions (estimated at 23.8 tons per day in 2015 in the February 8, 1995 Briggs memorandum, or 29 tons per day in the April 23, 1997 RAQC memorandum) in defining the region's 177 ton per day safety margin (and thus, in setting the 60 ton budget). More importantly, this aspect of the conformity modeling methodology (that is, not considering growth in non-mobile sources each time a conformity determination is made) is consistent with the way conformity is applied in the other nonattainment areas throughout the country which rely solely on their SIP emission budgets. Growth in non-mobile sources must be considered when budgets are set through the SIP process; however, there is no requirement for future conformity determinations to continually re-evaluate the adequacy of these budgets given growth in non-mobile sources.

In summary, EPA believes that the fact that only a small portion of the SIP's safety margin has been allocated to the mobile source emissions budget, along with the requirement for dispersion modeling each time a conformity determination is conducted, are adequate to ensure that the NAAQS are protected by the emissions budgets adopted by the State and submitted to EPA. EPA is requesting further comment in support of or opposed to this rationale for approving the budget submittals.

### III. Proposed Action

EPA is seeking additional information from interested parties on two issues related to the Denver $PM_{10}$ and $NO_X$ mobile source emissions budget SIPs. EPA initially proposed approval of the SIP revisions on October 3, 1996 (61 FR 51631).

As indicated elsewhere in this document, EPA will consider any comments received by September 4, 1997 relating to the two issues described above relating to the two SIPs.

### IV. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

### V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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, EPA may certify that the rule will not have a significant economic 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.

SIP approvals under sections 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this proposed Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

### VI. 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 informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has also determined that this proposed action 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. This Federal action would approve pre-existing requirements under State or local law, and would impose no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector would result form this action.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: July 14, 1997.

**Jack W. McGraw,**

*Acting Regional Administrator.*

[FR Doc. 97–20582 Filed 8–4–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 721

**[OPPTS–50625A; FRL–5734–1]**

## Proposed Revocation of Significant New Use Rules For Certain Acrylate Substances; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Extension of comment period.

**SUMMARY:** EPA is extending the comment period for the proposed significant new use rule (SNUR) for certain acrylate esters. As initially published in the **Federal Register** of June 2, 1997 (62 FR 29688) (FRL–5595–1), the comments were to be received on or before July 2, 1997. One commenter requested additional time to research and submit more detailed comments concerning these proposed revocations. EPA is therefore extending the comment period in order to give all interested persons the opportunity to comment fully.

**DATES:** Written comments must be submitted to EPA by August 14, 1997.

**ADDRESSES:** Each comment must bear the appropriate docket control number OPPTS–50625, etc. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Street, SW., Room G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt-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 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by (OPPTS–50625, etc.). No confidential business information (CBI) should be submitted through e-mail. Electronic comment on this notice may be filed online at many Federal Depository Libraries.

All comments which are claimed confidential must be clearly marked as such. Three additional sanitized copies of any comments containing CBI must also be submitted. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection.

**FOR FURTHER INFORMATION CONTACT:** Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–3949; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** This extension of the comment period will allow interested parties who intend to comment on the proposed rule additional time to consider their response.

### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.

Dated: July 24, 1997.

**Charles M. Auer,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 97–20562 Filed 8-4-97; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 63

**[IB Docket No. 96–261, DA 97–1563]**

### International Settlement Rates

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** On December 19, 1996, the Federal Communications Commission released a Notice of Proposed Rulemaking (''NPRM'') that proposes changes to the Commission's international settlement benchmark rates that will move settlement rates closer to the underlying costs of providing international termination services. On July 22, AT&T filed a motion for the Commission to grant confidential treatment for documents that AT&T has filed under seal for inclusion in the record in this proceeding. The Commission granted AT&T's request. (Order Granting Motion for Confidential Treatment, IB Docket No. 96, 261, DA 97–1563, adopted and released on July 23, 1997)

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554. AT&T would make these documents available for inspection pursuant to the terms of the Confidentiality Agreement at the premises of AT&T, 10th Floor, North Tower, 1120 20th Street, N.W., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** John Giusti, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1407.

**SUPPLEMENTARY INFORMATION:**

1. AT&T Corp. (''AT&T'') has filed a motion for the confidential treatment of documents that AT&T has filed under seal for inclusion in the record of the above-captioned proceeding. We grant AT&T's motion, finding that it will serve the public interest by facilitating full development of the record in this proceeding while safeguarding the proprietary and confidential information of AT&T.

2. In the *International Settlement Rates Benchmarks NPRM (''NPRM''),* the Commission proposed to calculate benchmarks for international settlement rates based in part on foreign carriers' tariffed rates (International Settlement Rates, NPRM, IB Docket No. 96–261, 61 FR 68702 (December 31, 1996)). As part of the benchmarks calculations, the International Bureau distributed international calls from the United States among service classifications, time periods, and the destination of the calls. We determined the distribution of minutes for each country in part from information collected on AT&T customers' calls during a three month period that began on January 6, 1996. In its comments, ABS-CBN requested that we put this call distribution data on the record. The documents AT&T has filed under seal contain such call distribution data. AT&T states that this data ''is competitively sensitive, not publicly disclosed in AT&T's normal course of business, and exempt from disclosure under §§ 0.457 and 0.459 of the Commission's rules.'' AT&T asserts that unauthorized disclosure could lead to substantial competitive harm to AT&T.

3. Although we believe that U.S. international carriers would likely have call distribution data on their U.S.-originated traffic and foreign carriers receiving settlement payments would likely have the call distribution data on the U.S.-originated traffic that they terminate, we nonetheless want to ensure that all parties have a full opportunity for notice and comment on our proposed benchmark settlement rates. We therefore find that adoption of AT&T's motion will serve the public interest by facilitating full development of the record in this proceeding while protecting the proprietary and confidential information of AT&T. We recognize that AT&T's call distribution data could provide competitors with competitively-sensitive market and cost structure information about AT&T's operations. In order to ensure that the data contained in AT&T's documents are not used for any purpose other than to assist parties in commenting fully on the proposals the Commission made in the *NPRM,* we will allow AT&T to make the proprietary and confidential call distribution data available pursuant to the Confidentiality Agreement attached to its motion, the terms and conditions of which we find reasonable. Parties of record wishing to examine this data may do so at the premises of AT&T, 10th Floor, North Tower, 1120 20th Street, NW, Washington, DC, 20036, Monday through Friday, between the hours of 9 a.m. and 5 p.m.

4. Accordingly, *It Is Ordered,* pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. section 4(i), and sections 0.51, 0.261, 0.457 and 0.459 of the Commission's rules, 47 CFR §§ 0.51, 0.261, 0.457, 0.459, that AT&T's motion for confidential treatment *Is Granted.* Nothing in this Order, or AT&T's Confidentiality Agreement, shall restrict the Commission's authority to use information or materials obtained in the course of this proceeding.

5. *It Is Further Ordered* that this Order shall be effective upon adoption.

Federal Communications Commission.

**Peter F. Cowhey,**

*Chief, International Bureau.*

[FR Doc. 97–20397 Filed 8–4–97; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 14

**RIN 1018–AD98**

### Humane and Healthful Transport of Wild Mammals, Birds, Reptiles and Amphibians to the United States; Notice of Extension of Comment Period on Proposed Rule

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of extension of comment period.

**SUMMARY:** The Fish and Wildlife Service (Service), pursuant to the Lacey Act Amendments of 1981, provides notice of extension of the comment period for the proposed amendment of 50 CFR Part 14, covering the humane and healthful transport of wild mammals, birds, reptiles and amphibians to the United States. The comment period has been extended so that interested members of the public can review the proposal and offer comments to the Service.

**DATES:** The comment period, which originally closed on September 4, 1997, is now extended to close on October 6, 1997.

**ADDRESSES:** Written comments should be sent to the Director, U.S. Fish and Wildlife Service, c/o Office of Management Authority either by mail 4401 N. Fairfax Drive, Room 430, Arlington, VA 22203 or by fax (703) 358–2280.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bruce J. Weissgold, Office of Management Authority, U.S. Fish and Wildlife Service, telephone (703) 358–2095, fax (703) 358–2280.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

Comments and other information can also be sent via electronic mail (E-mail) to: r9oma__cites@fws.gov.

### Background

On Friday, June 6, 1997, the Service published in the **Federal Register** (62 FR 31044) a proposed rule announcing the Service's intention to amend 50 CFR part 14 subpart J to further implement the requirements of the Lacey Act (18 U.S.C. 42 (c)). The Lacey Act prohibits the importation into the United States of all wild animals and birds under inhumane or unhealthful conditions, and requires that the United States Government promulgate regulations governing the importation of wildlife. On June 17, 1992, the Service finalized (57 FR 27094) the rules contained in 50 CFR part 14 subpart J, establishing rules for the humane and healthful transport of wild mammals and birds to the United States.

To more fully implement the amendments of the Lacey Act, which requires the healthful and humane transport of all classes of wild animals and birds and the promulgation of regulations necessary to that end, the Service proposes to extend 50 CFR part 14 subpart J to include rules for the healthful and humane transport of reptiles and amphibians. Furthermore, many reptiles and amphibians are species included in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Parties to CITES have adopted a resolution that calls for all CITES-listed species to be packed and shipped in accordance with the International Air Transport Association (IATA) Live Animals Regulations. Therefore, the proposed rule would place these internationally accepted standards into the Code of Federal Regulations for reptiles and amphibians.

For this, and other reasons discussed in the June 6, 1997 **Federal Register**, the Service is proposing amendments to 50 CFR Part 14 concerning humane and healthful transport of reptiles and amphibians into the United States.

### Public Comments Solicited

On July 22, 1997 the Service received a request from Underground Reptiles to extend the comment period on this proposed rule by 30 days ''so that various reptile and amphibian importers, shippers, and hobbyists can meet to review the proposal, gather data regarding shipments and submit meaningful comments.'' On July 23, 1997, the Service received a similar letter from Reptile Masters, Inc. Due to the complexity of the proposed rule, the need for data gathering by potential commenters, and the expressed interest of members of the public, the Service is extending the comment period and solicits comments from all interested parties. All comments received by the date specified above will be considered in the Service's final decision.

### Authority

The authority for this action is the Lacey Act, as amended (18 U.S.C. 42 (c)).

Dated: July 30, 1997.

**Marshall P. Jones, Jr.**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 97–20593 Filed 8–4–97; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AE29**

## Endangered and Threatened Wildlife and Plants; Notice to Extend the Comment Period on the Proposal to List the Klamath River Population Segment of Bull Trout as an Endangered Species and Columbia River Population Segment of Bull Trout as a Threatened Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) gives notice that the comment period announced in the June 13, 1997 proposed rule (62 FR 32268) to list the Klamath River population segment of bull trout as an endangered species and Columbia River population segment of bull trout as a threatened species will be extended. The Service received a number of requests for additional time to complete the compilation of information and meaningfully participate in the process. The Service finds the requests to be reasonable and hereby extends the comment period for 65 days.

**DATES:** The comment period is extended until October 17, 1997. Any comments and materials received by the closing date will be considered in the final determination.

**ADDRESSES:** Comments and material concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Snake River Basin Field Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709. All public comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert Ruesink, Supervisor, Snake River Basin Field Office (see **ADDRESSES** section) (telephone 208/378–5243; facsimile 208/378–5262).

**SUPPLEMENTARY INFORMATION:**

### Background

On June 13, 1997, the Service published a proposed rule pursuant to the Endangered Species Act of 1973, as amended (Act) to list the Klamath River population segment of bull trout (*Salvelinus confluentus*) from south-central Oregon as endangered; and the Columbia River population segment of bull trout from the northwestern United States and British Columbia, Canada, as threatened. A special rule allowing take of bull trout within the Columbia River population segment in accordance with applicable State fish and wildlife conservation laws was included. A 60-day comment period ending August 12, 1997, was provided in the proposed rule. Five public hearings to gather additional input were held between July 1 and July 17, 1997 in Portland, Oregon; Spokane, Washington; Missoula, Montana; Klamath Falls, Oregon; and Boise, Idaho. Requests for a public comment period time extension were received from the Idaho Congressional representatives, Governor of Idaho, Governor of Oregon, and the Intermountain Forest Industry Association. Reasons given for these requests included complexity of issues, additional time to meaningfully participate and data collection is incomplete.

The Klamath River population segment, comprised of seven bull trout populations from south-central Oregon, is threatened by habitat degradation, irrigation diversions, and the presence of non-native brook trout. The Columbia River population segment, comprised of 386 bull trout populations in Idaho, Montana, Oregon, and Washington with additional populations in British Columbia, is threatened by habitat degradation, passage restrictions at dams, and competition from non-native lake and brook trout. Included in the proposal to list these population segments is a special rule allowing for take of bull trout within the Columbia River population segment in accordance with applicable State fish and wildlife conservation laws and regulations.

Pursuant to a court order, the proposed rule is based only on the 1994 administrative record. All available information, including current data, will be considered prior to taking final action on the listing proposal. If, after consideration of all available data, this proposal is made final, it would extend protection of the Act to these two bull trout population segments.

Written comments may now be submitted until October 17, 1997, to the Service Office in the **ADDRESSES** section.

Author: The primary author of this notice is Steve Duke (see **ADDRESSES** section).

### Authority

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

Dated: July 28, 1997.

**Thomas J. Dwyer,**

*Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 97–20540 Filed 8–4–97; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 23

## Proposed Revision of Regulations Implementing the Endangered Species Convention (Convention on International Trade in Endangered Species of Wild Fauna and Flora; CITES)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to propose rulemaking.

**SUMMARY:** This document requests suggestions and recommendations from the public for revisions to certain Federal regulations which implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in the United States; 50 CFR part 23 subparts A, B, C, and D. These regulations, which the U.S. Fish and Wildlife Service (Service) plans to update and modify, include provisions concerned with the import, export, re-export, and introduction from the sea of CITES-listed wildlife and plants to and from the United States, as well as those regulations which cover public participation in the development of U.S. negotiating positions for meetings of the CITES Conference of the Parties (COP).

**DATES:** Comments and other information received through September 30, 1997, will be considered by the Service in developing proposed amendments to 50 CFR part 23.

**ADDRESSES:** Comments and other information should be sent to Kenneth Stansell, Chief, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Bruce J. Weissgold or Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service: telephone 703/358–2093; fax 703/358–2280.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

Comments and other information can also be sent via electronic mail (E-mail) to: r9oma__cites@fws.gov.

### Background

The Service is planning to revise regulations covering the implementation of CITES in the United States (50 CFR part 23) in order to provide the public with a more transparent and open explanation of Service procedures with regard to the implementation of CITES wildlife and plant international trade control provisions. The Service is considering revising and reorganizing subparts A , B, C, and D of 50 CFR part 23. These regulations were last revised in 1977 and 1980 (depending on which subpart is considered); and since that time, the Service has developed and modified procedures to adjust to the changing circumstances and conditions necessary for effective CITES implementation in the United States.

At each of the ten CITES COPs convened since the treaty went into force in 1975, including COP10 which was held in Harare, Zimbabwe in June 1997, interpretive resolutions to the Convention have been adopted by the Parties. The Service has determined that some of these interpretive CITES resolutions, as they relate directly to implementation and enforcement of the Convention, need to be implemented through the promulgation of regulations. In addition, the Service has developed procedures through the statutory authority granted by Congress in the Endangered Species Act but has not yet updated Part 23 to incorporate those procedures. The proposed revision of 50 CFR part 23 will address those procedures and interpretive resolutions.

Furthermore, it is the intent of the Service to find ways to improve and enhance the opportunities which the public has to participate in the development of policy positions for meetings of the CITES Conference of the Parties (COP). The Service intends to continue to fully consider public input on the development of U.S. policy positions, and invites comments as to how the Service can most effectively receive information from the public on CITES COP policy position formulation. The Service will consider all comments regarding revisions to subparts A, B, C, and D of 50 CFR part 23, as well as comments on specific procedures related to these regulations. The Service is not requesting comments which are unrelated to 50 CFR part 23 revisions, such as CITES species listing positions, policy positions related to the CITES Conference of the Parties (COP), or any other wildlife trade issue which is not directly related to 50 CFR part 23 revisions.

Interested organizations and individuals are invited to comment on the planned revision of 50 CFR part 23 and on public participation in the development of Service policy positions for CITES COPs. The Service will consider all comments received during the comment period in drafting a proposed rule.

**Author:** This notice was prepared by Bruce J. Weissgold, Office of Management Authority, U.S. Fish and Wildlife Service, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

### List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

Dated: July 23, 1997.

**John G. Rogers,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 97–20594 Filed 8–4–97; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 600

**[Docket No. 970527125–7125–01; I.D. 032797B]**

**RIN 0648–AJ95**

## Magnuson Act Provisions; Appointment of Regional Fishery Management Council Members; Extension of Comment Period

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

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** At the request of a tribal representative, NMFS is extending the public comment period on a proposed rule to amend the regulations governing the nomination and appointment of

members of Regional Fishery Management Councils. The proposed rule would establish procedures applicable to the nomination and appointment to the Pacific Fishery Management Council (PFMC) of a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The purpose of this extension is to ensure adequate time for tribal governments to provide comments on the proposed rule.

**DATES:** Comments on the proposed rule must be received no later than August 11, 1997.

**ADDRESSES:** Comments should be sent to Mr. Will Stelle, Jr., Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or to Mr. William Hogarth, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206–526–6142 or Rodney McInnis at 562–980–4040.

**SUPPLEMENTARY INFORMATION:** Section 302(b)(5)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Secretary of Commerce (Secretary) to appoint to the PFMC one representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho, from a list of not less than three individuals submitted by the tribal governments. The Magnuson-Stevens Act requires the Secretary to prescribe regulatory procedure for submitting this list and requires the Secretary to consult with the Secretary of the Interior and with tribal governments in the establishment of that procedure. NMFS is extending the public comment period from July 31, 1997, through August 11, 1997, to ensure adequate time for tribal governments to comment on the proposed rule published on July 1, 1997 (62 FR 35468).

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

Dated: July 31, 1997.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–20597 Filed 7–31–97; 2:41 pm]

BILLING CODE 3510–22–F

# Notices

**Federal Register**

Vol. 62, No. 150

Tuesday, August 5, 1997

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. TB–97–12]**

### Burley Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

*Name:* Burley Tobacco Advisory Committee.

*Date:* September 5, 1997.

*Time:* 10 a.m.

*Place:* Campbell House Inn, South Colonial Hall, 1375 Harrodsburg Road, Lexington, Kentucky 40504.

*Purpose:* At the request of seven committee members, a meeting is being held to further discuss and reconsider a motion passed at the June 11, 1997, meeting regarding the distribution of sales opportunity allotted to each tobacco auction warehouse.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Director, Tobacco Division, AMS, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: July 30, 1997.

**William O. Coats,**

*Acting Director, Tobacco Division.*

[FR Doc. 97–20502 Filed 8–4–97; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Proposed Change to Section 4 of the Iowa State Technical Guide

**AGENCY:** Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

**ACTION:** Notice of availability of proposed changes in the Iowa State Technical Guide for review and comment.

**SUMMARY:** It has been determined by the NRCS State Conservationist for the Iowa that changes must be made in the NRCS State Technical Guide. Specifically, these practice standards are being revised to account for improved technology.

—327, Conservation Cover, and

—392, Reparian Forest Buffer

These practices can be used in systems that treat highly erodible land, improve water quality and improve wildlife habitat.

**DATES:** Comments will be received until September 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Leroy Brown, State Conservationist, Natural Resources Conservation Service, Federal Building, 210 Walnut Street, Suite 693, Des Moines, IA 50309–2180, phone (515) 284–6655; fax (515) 284–4394.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after the enactment of the law to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: July 30, 1997.

**Dennis J. Pate,**

*Acting State Conservationist.*

[FR Doc. 97–20543 Filed 7–31–97; 12:13 pm]

**BILLING CODE 3410–16–M**

## ASSASSINATION RECORDS REVIEW BOARD

### Formal Determinations, Releases, and Assassination Records Designation Reconsideration

**AGENCY:** Assassination Records Review Board.

**ACTION:** Notice.

**SUMMARY:** The Assassination Records Review Board (Review Board) met in a closed meeting on July 9, 1997, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

**FOR FURTHER INFORMATION CONTACT:** T. Jeremy Gunn, General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

**SUPPLEMENTARY INFORMATION:** This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.9(c)(4)(A) (1992). On July 9, 1997, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

### Notice of Formal Determinations

For each document, the number of postponements sustained immediately follows the record identification number, followed, where appropriate, by the date the document is scheduled to be released or re-reviewed.

CIA Documents: Postponed in Part

104–10068–10164; 8; 08/2008
104–10072–10233; 4; 08/2008
104–10073–10074; 38; 10/2017
104–10075–10096; 1; 10/2017
104–10075–10116; 1; 10/2017
104–10075–10124; 4; 08/2008
104–10088–10328; 19; 08/2008
104–10092–10369; 1; 10/2017
104–10092–10374; 27; 08/2008
104–10092–10392; 6; 08/2008
104–10092–10430; 4; 10/2017
104–10092–10431; 2; 10/2017
104–10095–10436; 4; 10/2017
104–10096–10112; 13; 10/2017
104–10097–10369; 2; 10/2017
104–10097–10373; 1; 05/2001
104–10097–10414; 2; 10/2017
104–10097–10425; 2; 08/2008

104–10097–10435; 1; 10/2017
104–10097–10449; 1; 08/2008
104–10098–10012; 8; 10/2017
104–10098–10030; 1; 10/2017
104–10102–10014; 7; 10/2017
104–10102–10047; 29; 08/2008
104–10102–10087; 12; 10/2017
104–10102–10145; 13; 05/2001
104–10102–10162; 5; 10/2017
104–10102–10180; 2; 08/2008
104–10102–10197; 7; 08/2008
104–10102–10224; 16; 10/2017
104–10103–10031; 2; 10/2017
104–10103–10037; 6; 10/2017
104–10103–10038; 2; 10/2017
104–10103–10041; 2; 10/2017
104–10103–10042; 4; 10/2017
104–10103–10043; 11; 10/2017
104–10103–10057; 4; 10/2017
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**Notice of Formal Determinations on Records Re-Reviewed**

The following documents were reviewed previously and released with postponements by the Review Board. The Review Board has re-reviewed the records and has made new formal determinations as follows.

CIA Documents: Open in Full

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**Notice of Additional Releases**

After consultation with appropriate Federal agencies, the Review Board announces that the following House Select Committee on Assassination records are now being opened in full:

180–10001–10018; 180–10001–10028; 180–10001–10034; 180–10001–10081; 180–10001–10216; 180–10065–10346; 180–10065–10380; 180–10067–10271; 180–10067–10272; 180–10067–10273; 180–10067–10274; 180–10067–10278; 180–10067–10279; 180–10067–10283; 180–10067–10295; 180–10067–10296; 180–10067–10298; 180–10067–10299; 180–10067–10300; 180–10067–10324; 180–10067–10346; 180–10067–10364; 180–10067–10379; 180–10067–10487; 180–10068–10382; 180–10070–10270; 180–10070–10285; 180–10070–10289; 180–10070–10350; 180–10070–10400; 180–10071–10081; 180–10071–10231; 180–10071–10289; 180–10071–10344; 180–10071–10345; 180–10071–10346; 180–10071–10347; 180–10071–10348; 180–10071–10349; 180–10071–10350; 180–10071–10351; 180–10071–10352; 180–10071–10353; 180–10071–10354; 180–10071–10355; 180–10071–10356; 180–10071–10357; 180–10071–10358; 180–10071–10359; 180–10071–10360; 180–10071–10361; 180–10071–10362; 180–10071–10364; 180–10071–10365; 180–10071–10366; 180–10071–10367; 180–10071–10368; 180–10071–10369; 180–10071–10370; 180–10071–10371; 180–10071–10372; 180–10071–10376; 180–10071–10395; 180–10071–10396; 180–10071–10397; 180–10071–10398; 180–10071–10399; 180–10071–10400; 180–10071–10401; 180–10071–10402; 180–10071–10403; 180–10071–10404; 180–10071–10405; 180–10071–10406; 180–10071–10407; 180–10071–10408; 180–10071–10409; 180–10071–10410; 180–10071–10411; 180–10071–10412; 180–10071–10415; 180–10071–10416; 180–10071–10417; 180–10071–10418; 180–10071–10419; 180–10071–10420; 180–10071–10421; 180–10073–10016; 180–10073–10165; 180–10073–10167; 180–10074–10150; 180–10074–10337; 180–10074–10390; 180–10074–10419; 180–10074–10423; 180–10074–10456; 180–10074–10457; 180–10074–10458; 180–10074–10495; 180–10075–10058; 180–10075–10383; 180–10075–10410; 180–10076–10262; 180–10076–10406; 180–10077–10115; 180–10077–10173; 180–10077–10196; 180–10077–10218; 180–10077–10255; 180–10077–10290; 180–10077–10293; 180–10077–10388; 180–10077–10413; 180–10078–10464; 180–10078–10487; 180–10080–10079; 180–10080–10082; 180–10080–10086; 180–10080–10091; 180–10080–10113; 180–10080–10119; 180–10080–10168; 180–10080–10169; 180–10080–10258; 180–10080–10357; 180–10081–10294; 180–10082–10092; 180–10083–10360; 180–10083–10379; 180–10083–10398; 180–10083–10399; 180–10084–10472; 180–10085–10312; 180–10085–10415; 180–10086–10020; 180–10086–10026; 180–10086–10033; 180–10086–10034; 180–10086–10035; 180–10086–10044; 180–10086–10052; 180–10086–10236; 180–10086–10494; 180–10086–10496; 180–10086–10497; 180–10086–10498; 180–10086–10499; 180–10087–10051; 180–10087–10055; 180–10087–10061; 180–10087–10067; 180–10087–10070; 180–10087–10071; 180–10087–10134; 180–10087–10139; 180–10089–10029; 180–10089–10044; 180–10089–10047; 180–10089–10260; 180–10089–10275; 180–10089–10344; 180–10090–10117; 180–10090–10133; 180–10091–10384; 180–10091–10393; 180–10092–10277; 180–10092–10281; 180–10092–10325; 180–10092–10373; 180–10093–10009; 180–10093–10013; 180–10093–10024; 180–10094–10109; 180–10094–10122; 180–10094–10340; 180–10095–10160; 180–10095–10205; 180–10095–10326; 180–10096–10050; 180–10096–10051; 180–10096–10421; 180–10097–10008; 180–10097–10009; 180–10097–10010; 180–10097–10012; 180–10097–10013; 180–10097–10014; 180–10097–10015; 180–10097–10016; 180–10097–10017; 180–10097–10020; 180–10097–10027; 180–

10097–10028; 180–10097–10043; 180–10097–10044; 180–10097–10045; 180–10097–10046; 180–10097–10047; 180–10097–10048; 180–10097–10049; 180–10097–10050; 180–10097–10051; 180–10097–10052; 180–10097–10053; 180–10097–10054; 180–10097–10055; 180–10097–10057; 180–10097–10058; 180–10097–10059; 180–10098–10039; 180–10100–10008; 180–10101–10076; 180–10101–10094; 180–10101–10096; 180–10101–10289; 180–10101–10352; 180–10101–10377; 180–10102–10151; 180–10102–10154; 180–10102–10228; 180–10102–10432; 180–10103–10128; 180–10103–10227; 180–10103–10234; 180–10103–10256; 180–10103–10274; 180–10104–10030; 180–10104–10033; 180–10104–10038; 180–10104–10235; 180–10104–10326; 180–10104–10327; 180–10104–10356; 180–10104–10363; 180–10104–10373; 180–10104–10426; 180–10104–10433; 180–10105–10132; 180–10105–10133; 180–10105–10412; 180–10106–10146; 180–10106–10346; 180–10107–10085; 180–10107–10128; 180–10108–10049; 180–10108–10072; 180–10108–10099; 180–10108–10173; 180–10108–10238; 180–10108–10239; 180–10108–10259; 180–10108–10260; 180–10108–10267; 180–10108–10272; 180–10108–10282; 180–10108–10320; 180–10108–10333; 180–10109–10385; 180–10109–10386; 180–10109–10387; 180–10109–10388; 180–10109–10459; 180–10109–10460; 180–10109–10461; 180–10110–10207; 180–10111–10073; 180–10111–10128; 180–10111–10232; 180–10112–10018; 180–10112–10021; 180–10112–10027; 180–10112–10028; 180–10112–10029; 180–10112–10030; 180–10112–10031; 180–10112–10081; 180–10112–10101; 180–10112–10103; 180–10112–10314; 180–10112–10465; 180–10112–10492; 180–10113–10083; 180–10113–10363; 180–10113–10456; 180–10113–10461; 180–10113–10489; 180–10114–10184; 180–10114–10238; 180–10115–10099; 180–10115–10106; 180–10115–10111; 180–10115–10112; 180–10115–10115; 180–10116–10100; 180–10117–10131; 180–10117–10133; 180–10118–10040; 180–10119–10091

After consultation with appropriate Federal agencies, the Review Board announces that the following Federal Bureau of Investigation records are now being opened in full:

124–10010–10455; 124–10147–10081; 124–10147–10392; 124–10168–10014; 124–10179–10300; 124–10182–10435; 124–10183–10193; 124–10186–10040; 124–10188–10061; 124–10261–10408; 124–10261–10421; 124–10264–10207; 124–10270–10302; 124–10272–10443; 124–10274–10302; 124–10274–10341

### Notice of Assassination Records Designation

*Designation:* On July 9, 1997, the Review Board designated the following United States Secret Service records as ''assassination records'': the Gilberto Lopez file [127–CO2–0073684], 67 pages; and various documents from Robert Bouck's files totaling 73 pages provided to the Review Board by the USSS.

Dated: July 30, 1997.

**T. Jeremy Gunn,**

*General Counsel and Associate Director for Research & Analysis.*

[FR Doc. 97–20542 Filed 8–4–97; 8:45 am]

**BILLING CODE 6118–01–P**

## DEPARTMENT OF COMMERCE

### Submission For OMB Review; Comment Request

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

*Agency:* Bureau of the Census.

*Title:* Survey of Income and Program Participation 1996 Panel Wave 6.

*Form Number(s):* CAPI Automated Instrument and SIPP16605(L).

*Agency Approval Number:* 0607–0813.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 117,800 hours.

*Number of Respondents:* 77,700.

*Avg Hours Per Response:* 30 minutes.

*Needs and Uses:* The Bureau of the Census conducts the Survey of Income and Program Participation (SIPP) to collect information from a sample of households concerning the distribution of income received directly as money or indirectly as in-kind benefits. SIPP data are used by economic policymakers, the Congress, State and local governments, and Federal agencies that administer social welfare and transfer payment programs such as the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Agriculture.

The SIPP is a longitudinal survey, in that households in the panel are interviewed 12 times at 4 month intervals or waves over the life of the panel, making the duration of the panel about 4 years. The next panel of households will be introduced in the year 2000.

The survey is molded around a central core of labor force and income questions, health insurance questions, and questions concerning government program participation that remain fixed throughout the life of a panel. The core questions are asked at Wave 1 and are updated during subsequent interviews. The core is supplemented with additional questions or topical modules designed to answer specific needs.

This request is for clearance of the topical modules to be asked during Wave 6 of the 1996 Panel. The core questions have already been cleared. Topical modules for waves 7 through 12 will be cleared later. The topical modules for Wave 6 are: (1) Children's Well-Being, (2) Assets, Liabilities, and Eligibility, (3) Medical Expenses/Utilization of Health Care (Adults/Children), (4) Work Related Expenses, and (5) Child Support Paid. Wave 6 interviews will be conducted from December 1997 through March 1998.

*Affected Public:* Individuals or households.

*Frequency:* Every 4 months.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 USC, Section 182.

*OMB Desk Officer:* Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 29, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–20504 Filed 8–4–97; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

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

*Agency:* Bureau of the Census.

*Title:* Shipper's Export Declaration (SED) Program.

*Form Number(s):* 7513, 7525-V, 7525-V Alternate (Intermodal), AES, AERP.

*Agency Approval Number:* 0607–0152.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 1,316,137 hours.

*Number of Respondents:* 140,000.

*Avg Hours Per Response:* 7513, 7525-V & 7525-V Alt.—11 minutes AES & AERP—3 minutes.

*Needs and Uses:* The Shipper's Export Declaration (SEDs), Forms 7525-V, 7525-V Alternate (Intermodal), and their electronic equivalents, the Automated Export Reporting Program (AERP) and the Automated Export System (AES), are the basis for the official U.S. export statistics compiled by the Bureau of the Census. The SED for In-transit Goods, Form 7513 serves as the source document from which Census collects and compiles the official U.S. statistics on outbound in-transit shipments. The official export statistics provide a basic component for the compilation of the U.S. position on merchandise trade. These data are an essential component of the monthly totals on U.S. overall trade in goods and services, a leading economic indicator.

The SEDs also are export control documents under Title 50, United States Code and are used to detect and prevent the export of certain commodities (for example, high technology or military goods) to unauthorized destinations or end users. The SEDs as official documents of export transactions, enable the U.S. Customs Service and the Bureau of Export Administration to enforce the Export Administration Regulations and thereby detect and prevent the export of high technology commodities to unauthorized destinations. The Department of State uses the SED to enforce the International Traffic in Arms Regulations to detect and prevent the export of arms and ammunition to unauthorized destinations.

In the past, each different type of paper SED form was cleared separately. In recent years the number of submissions via automated programs—(AERP) operated by Census and the new AES operated by Customs—have grown rapidly and must now be considered as part of the SED submissions. With this submission we will combine the various types of SEDs, both paper and electronic, under one OMB clearance submission to better reflect reporting burden and streamline the clearance process.

*Affected Public:* Businesses or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 USC, Chapter 9, Sections 301–307; 15 CFR Part 30 (Foreign Trade Statistics Regulations).

*OMB Desk Officer:* Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 30, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–20505 Filed 8–4–97; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Export Trade Certificate of Review

**ACTION:** Notice of application to amend certificate.

**SUMMARY:** The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5l3l. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 84–8A012.''

Northwest Fruit Exporters' (''NFE'') original Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16303, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); August 16, 1994 (59 FR 43093); and November 4, 1996 (61 FR 57850, November 8, 1996). A summary of the application for an amendment follows.

*Summary of the Application:*

*Applicant:* Northwest Fruit Exporters (''NFE''), 105 South 18th Street, #227, Yakima, Washington 98901.

*Contact:* James R. Archer, Manager, Telephone: (509) 576–8004.

*Application No.:* 84–8A012.

*Date Deemed Submitted:* July 24, 1997.

*Proposed Amendment:* Northwest Fruit Exporters seeks to amend its Certificate to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): D & G Packing Inc., Plymouth, Washington; Fox Orchards, Mattawa, Washington; J.C. Watson Company, Parma, Idaho; Jenks Bros. Cold Storage, Inc., Royal City, Washington; Monson Fruit Co., Selah, Washington; Poirier Packing & Warehouse, Pateros, Washington; and Williamson Orchards, Caldwell, Idaho; and

2. Delete the following companies as ''Members'' of the Certificate: Dole Northwest, Wenatchee, Washington; Sands Orchards, Inc., Emmett, Idaho.

Dated: July 30, 1997.

**W. Dawn Busby,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 97–20567 Filed 8–4–97; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D.072297B]**

### Ecosystem Principles Advisory Panel; Advisory panel meeting.

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

**ACTION:** Notice of advisory panel meeting.

**SUMMARY:** Pursuant to section 406 of the Magnuson-Stevens Fishery Conservation and Management Act (U.S.C. 1801 et seq.) (Magnuson-Stevens Act) which requires NMFS to establish an advisory panel to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities, NMFS is announcing the date, time, and location of the first of three advisory panel meetings which is scheduled as follows:

**DATES:** The first advisory panel meeting will be held Wednesday, September 10, 1997, 9 a.m.–5:00 p.m. and Thursday, September 11, 1997, 8:00 a.m.–5:00 p.m.

**ADDRESSES:** Doubletree Park Terrace, 1515 Rhode Island Ave., NW, Washington, DC 20005; Tel: (202) 232–7000.

**FOR FURTHER INFORMATION CONTACT:** Ned Cyr, Office of Science and Technology, NMFS, 1315 East-West Hwy., Silver Spring, MD 20910; Telephone: (301)713-2363, Fax: (301) 713-1875.

**SUPPLEMENTARY INFORMATION:** Section 406 of the Magnuson-Stevens Act, requires NMFS to establish an advisory panel, not later than April 11, 1997, to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities. The panel will consist of no more than 20 individuals with expertise in the structures, functions, and physical and biological characteristics of ecosystems. The panel will also consist of representatives from the Regional Fishery Management Councils, states, fishing industry, conservation organizations, or others with expertise in the management of marine resources. The panel is required to submit a report to Congress by October 11, 1998, which includes: an analysis of the extent to which ecosystem principles are being applied in fishery conservation and management activities, including research activities; proposed actions by the Secretary of Commerce and by Congress that should be undertaken to expand the application of ecosystem principles in fishery conservation and management; and such other information as may be appropriate.

Time will be allotted for public comments at the meeting. Persons planning to comment at the panel meeting should notify NMFS at least two weeks prior to the meeting (close of business Wednesday, August 26, 1997).

**Special Accomodations:**

These review panel meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ned Cyr at (301) 713-2363 at least 5 days prior to the advisory panel meeting.

Dated: July 29, 1997.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–20591 Filed 8-4-97; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

## DEPARTMENT OF THE INTERIOR

### U.S. Fish and Wildlife Service

**[I.D. 073097C]**

### Marine Mammals; Permit No. 1032 (P624)

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

**ACTION:** Issuance of amendment.

**SUMMARY:** Notice is hereby given that Dr. Michael J. Moore, Research Specialist, MS 33 Biology, Department, Woods Hole Oceanographic Institution, Woods Hole, MA 02543, or its designated agent, has been issued a permit to take marine mammal specimens for the purpose of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment (SEE **SUPPLEMENTARY INFORMATION**).

**SUPPLEMENTARY INFORMATION:** The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA, 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222.25), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

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 which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act.

Addresses: Documents may be reviewed in the following locations:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203 (703/358–2104);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/570–5301).

Dated: July 29, 1997.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

Dated: July 29, 1997.

**Margaret Tieger,**

*Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.*

[FR Doc. 97–20590 Filed 8-4-97; 8:45 am]

**BILLING CODE 3510–22–F**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Submission for OMB Review; Comment Request

The Corporation for National and Community Service (CNCS), has submitted the following public information collection requests (ICRs) to the Office of Management and Budget

(OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Margaret Rosenberry, Extension 188. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 565–2799, between 8:30 am and 6:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C., 20503. (202) 395-7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**SUPPLEMENTARY INFORMATION:**

**Part I**

*Type of Review:* New.

*Agency:* Corporation for National and Community Service.

*Title:* The 1998 Application Guidelines for Learn and Serve America Higher Education.

*OMB Number:* None.

*Agency Number:* None.

*Affected Public:* Eligible applicants to the Corporation for grant funds.

*Total Respondents:* 400.

*Frequency:* Once per year.

*Average Time Per Response:* Six (6) hours.

*Estimated Total Burden Hours:* 2400.

*Total Annual Cost (capital/startup):* $11,400.

*Total Annual Cost (operating/maintenance):* 0.

*Description:* The Corporation for National and Community Service seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portions of these guidelines.

**Part II**

*Type of Review:* New.

*Agency:* Corporation for National and Community Service.

*Title:* The 1998 Application Guidelines Learn and Serve School, Community-Based and Demonstration Programs.

*OMB Number:* None.

*Agency Number:* None.

*Affected Public:* Eligible applicants to the Corporation for grant funds.

*Total Respondents:* 225.

*Frequency:* Once per year.

*Average Time Per Response:* Ten (10) hours.

*Estimated Total Burden Hours:* 2250.

*Total Burden Cost (capital/startup):* $13,860.

*Total Burden Cost (operating/maintenance):* 0.

*Description:* The Corporation for National and Community Service seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these guidelines.

**Part III**

*Type of Review:* New.

*Agency:* Corporation for National and Community Service.

*Title:* The 1998 Application Guidelines for AmeriCorps National, State, Demonstrations and Indian Tribes and U.S. Territories.

*OMB Number:* None.

*Agency Number:* None.

*Affected Public:* Eligible applicants to the Corporation for grant funds.

*Total Respondents:* 2000.

*Frequency:* Once per year.

*Average Time Per Response:* Ten (10) hours.

*Estimated Total Burden Hours:* 20,000.

*Total Burden Cost (capital/startup):* $15,242.

*Total Burden Cost (operating/maintenance):* 0.

*Description:* The Corporation for National and Community Service seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these guidelines.

Dated: July 30, 1997.

**Margaret Rosenberry,**

*Director, Planning and Program Development.*

[FR Doc. 97–20595 Filed 8–4–97; 8:45 am]

**BILLING CODE 6050–28–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 97–24]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Assistance Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–24, with attached transmittal and policy justification.

Dated: July 29, 1997.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5000–04–M**

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

11 JUL 1997

In reply refer to:
I-04713/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-24, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Saudi Arabia for defense articles and services estimated to cost $300 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 97-24

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 0 million |
| Other | $300 million |
| TOTAL | $300 million |

(iii) Description of Articles or Services Offered:
Contractor support services including maintenance and construction in support of five E-3 Airborne Warning and Control System, seven KE-3 aerial refueling tanker and one KE-3 Tactical Air Surveillance aircraft previously purchased from the U.S. Government.

(iv) Military Department: Air Force (GHU)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
None

(vii) Date Report Delivered to Congress: 11 JUL 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia - Contractor Maintenance, Training, and Technical Services

The Government of Saudi Arabia has requested contractor support services including maintenance and construction in support of five E-3 Airborne Warning and Control System, seven KE-3 aerial refueling tanker and one KE-3 Tactical Air Surveillance aircraft previously purchased from the U.S. Government. The estimated cost is $300 million.

This sale will contribute to the foreign policy and national security of the United States by helping to maintain the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Saudi Arabia needs these services to ensure continued operational readiness of the Airborne Warning and Control System, aerial refueling tankers, and other surveillance aircraft.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor for this follow-on effort will be the Boeing Company, Wichita, Kansas. There are no offset agreements proposed to be entered into in connection with this potential sale.

The implementation of this sale will require approximately 500 contractor representatives in-country for three years to provide the technical and maintenance support.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 97–20501 Filed 8–4–97; 8:45 am]
BILLING CODE 5000–04–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the Task Force on Defense Reform

**AGENCY:** Department of Defense, Task Force on Defense Reform.

**ACTION:** Notice.

**SUMMARY:** The Task Force on Defense Reform will meet in closed sessions on August 19, 21, 26, 28, and September 4, 9, 11, 16, and 18, 23, and 25, 1997.

The Task Force on Defense Reform was recently established to make recommendations to the Secretary of Defense and Deputy Secretary of Defense on alternatives for organizational reforms, reductions in management overhead, and streamlined business practices in the Department of Defense (DoD), with emphasis on the Office of the Secretary of Defense, the Defense Agencies and the DoD field activities, and the Military Departments.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended, 5 U.S.C., Appendix II, it has been determined that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1)(1988), will be presented throughout the meetings, and that, accordingly, these meetings will be closed to the public.

Dated: July 28, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–20500 Filed 8–4–97; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education: Direct Grant Programs and Fellowship Programs

**AGENCY:** Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year 1998.

**SUMMARY:** The Assistant Secretary for Postsecondary Education invites applications for new awards for fiscal year (FY) 1998 under a number of the Department's direct grant and fellowship programs and announces deadline dates for the transmittal of applications under these programs. This combined notice also lists other programs and competitions of the Office of Postsecondary Education (OPE) under which application notices for new awards for FY 1998 will be published at a later date.

**DATES:** For each program and competition announced in this notice, the chart includes the following dates: the date on which applications will be available, the deadline for submission of applications, and—for programs subject to Executive Order (EO) 12372 (Intergovernmental Review of Federal Programs)—the deadline date for transmittal of State Process Recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties.

**ADDRESSES:** *For Applications or Further Information:* The address and telephone number for obtaining applications for, or further information about, an individual program are in the application notice for that program.

*For Users of TDD or FIRS:* Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number, if any, listed in the individual application notices. If a TDD number is not listed for a given program, individuals who use a 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.

*For Intergovernmental Review:* The address for transmitting recommendations and comments under Executive Order 12372 is in the appendix to this notice.

*For Electronic Access to Information:* Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the World Wide Web (at http://gcs.ed.gov/). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

**SUPPLEMENTARY INFORMATION:** This combined application notice contains those application announcements that the Assistant Secretary for Postsecondary Education is able to publish at this time.

The Assistant Secretary has announced, or intends to announce, separately the following additional program competitions for the Office of Postsecondary Education under which the Department plans to make new awards for FY 1998:

- CFDA No. 84.031A. Strengthening Institutions Program.
- CFDA No. 84.031H. Designation as an Eligible Institution for the Strengthening Institutions and Endowment Challenge Grant Programs.
- CFDA No. 84.200. Graduate Assistance in Areas of National Need Program.
- CFDA No. 84.262. Programs to Encourage Minority Students to Become Teachers.
- CFDA No. 84.103. Training Program for Federal TRIO Programs
- CFDA No. 84.066. Educational Opportunity Centers Program
- CFDA No. 84.031G. Endowment Challenge Grant Program
- CFDA No. 84.044. Talent Search Program
- CFDA No. 84.116A&B. Comprehensive Program.
- CFDA No. 84.116J. European Community/United States of America Joint Consortia for Cooperation in Higher Education and Vocational Education.
- CFDA No. 84.116N. Program for North American Mobility in Higher Education.
- CFDA No. 84.116P. Disseminating Proven Reforms.
- CFDA No. 84.116R. Institutional Restructuring in Higher Education.

#### Available Funds

The Congress has not yet enacted a FY 1998 appropriation for the Department of Education. The Assistant Secretary for Postsecondary Education is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimates of the amounts of funds that will be available for these programs are based on the President's FY 1998 budget request.

Potential applicants should note, however, that the Congress may increase, eliminate, or reduce funding in FY 1998 for some of the discretionary grant programs administered by the Department. Final action on the FY 1998 appropriation may require the Department to cancel some of the competitions announced in this notice, as well as some of those the notice indicates will be announced at a later date.

The Department of Education is not bound by any of the Estimates in this notice.

#### National Education Goals

In developing this combined application notice the Assistant Secretary for Postsecondary Education has sought to ensure that programs awarding grants during FY 1998 will further achieve the National Education Goals, as found in Pub. L. 103–227 (the Goals 2000: Educate America Act, enacted March 31, 1994). The Secretary encourages applicants under these programs to consider the National

Education Goals in developing their applications.

The National Education Goals for the year 2000 are as follows:

- All children in America will start school ready to learn.
- The high school graduation rate will increase to at least 90 percent.
- All students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, including English, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our Nation's modern economy.
- United States students will be first in the world in mathematics and science achievement.
- Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.
- Every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.
- The Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.
- Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

**Applicability of Section 5301 of the Anti-Drug Abuse Act of 1988**

A number of programs listed in this announcement provide that a grant, fellowship, traineeship, or other monetary benefit may be awarded to an individual. This award may be made to the individual either directly by the Department or by a grantee that receives Federal funds for the purpose of providing, for example, fellowships, traineeships, or other awards to individuals.

Section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690; 21 U.S.C. 862) provides that a sentencing court may deny eligibility for certain Federal benefits to an individual convicted of drug trafficking or possession. Thus, an individual who applies for a grant, fellowship, or other monetary benefit under a program covered by this notice should understand that, if convicted of drug trafficking or possession, he or she is subject to denial of eligibility for that benefit if the sentencing court imposes such a sanction. This denial applies whether the Federal benefit is provided to the individual directly by the Department or is provided through a grant, fellowship, traineeship, or other award made available with Federal funds by a grantee.

Any persons determined to be ineligible for Federal benefits under the provisions of section 5301 are listed in the General Services Administration's ''Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.''

**Applicability of the Federal Debt Collection Procedures Act of 1990**

The programs listed in the chart make discretionary awards subject to the eligibility requirements of the Federal Debt Collection Procedures Act of 1990 (Pub. L. 101–647; 28 U.S.C. 3201). The Act provides that if there is a judgment lien against a debtor's property for a debt to the United States, the debtor is not eligible to receive a Federal grant or loan, except direct payments to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

**Intergovernmental Review of Federal Programs**

Certain programs in this notice are subject to the requirements of EO 12372 and the regulations in 34 CFR part 79. These programs are identified in the chart by a date in the column headed ''Deadline for intergovernmental review.'' For further information, an applicant under a program subject to the Executive order—and other parties interested in that program—are directed to the appendix to this notice.

CHART 5.—OFFICE OF POSTSECONDARY EDUCATION

| CFDA No. and Name | Applications available | Application deadline date | Deadline for intergovernmental review | Estimated range of awards | Estimated average size of awards | Estimated number of awards |
|---|---|---|---|---|---|---|
| 84.016A—Undergraduate International Studies and Foreign Language Program. | 8/29/97 | 11/3/97 | 1/2/98 | Single institutions: $40,000–90,000. | $64,000 | 22 |
| | | | | Consortia and associations: .... 75,000–100,000 | 90,000 | 4 |
| 84.017A—International Research and Studies Program. | 8/29/97 | 10/31/97 | N/A | 40,000–150,000 ..... | 83,000 | 10 |
| 84.019A—Fulbright-Hays Faculty Research Abroad Program. | 8/29/97 | 10/27/97 | N/A | 18,000–70,000 ..... | [1] 41,000 | [2] 31 |
| 84.021A—Fulbright-Hays Group Projects Abroad Program. | 8/22/97 | 10/20/97 | N/A | 35,000–65,000 ..... | 58,000 | 24 |
| 84.022A—Fulbright-Hays Doctoral Dissertation Research Abroad Program. | 8/29/97 | 10/27/97 | N/A | 12,000–60,000 ..... | [1] 24,000 | [2] 75 |
| 84.153A—Business and International Education Program. | 8/29/97 | 11/7/97 | 1/6/98 | 50,000–90,000 ..... | 75,000 | 27 |
| 84.220A—Centers for International Business Education Program. | 8/29/97 | 11/10/97 | 1/9/98 | 200,000–310,000 ..... | 276,000 | 13 |
| 84.316A—Native Hawaiian Higher Education Program. | 10/31/97 | 01/30/98 | 04/01/98 | 500,000–1,000,000 ..... | 500,000 | 2 |
| 84.120A—Minority Science Improvement Program—Institutional, Design, Special, and Cooperative Projects. | 10/15/97 | 12/22/97 | 02/13/97 | Institutional Projects: ..... 100,000–200,000 ..... | 120,000 | 15 |
| | | | | Design Projects: ..... 15,000–20,000 | 18,000 | 2 |

CHART 5.—OFFICE OF POSTSECONDARY EDUCATION—Continued

| CFDA No. and Name | Applications available | Application deadline date | Deadline for intergovernmental review | Estimated range of awards | Estimated average size of awards | Estimated number of awards |
|---|---|---|---|---|---|---|
| | | | | Special Projects: ..... 20,000–150,000 | 25,000 | 12 |
| | | | | Cooperative Projects: ..... 20,000–500,000 | 280,000 | 3 |

[1] Per fellow.
[2] Indiv. fellowships.

**84.016A Undergraduate International Studies and Foreign Language Program**

*Purpose of Program:* To provide grants to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

*Eligible Applicants:* Institutions of higher education; combinations of institutions of higher education; and public and nonprofit private agencies and organizations, including professional and scholarly associations.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 655 and 658.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

*Priority:* Under 34 CFR 75.105(c)(2)(i), 34 CFR 658.35, and section 604(a)(4) of title VI of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards five points to an application depending upon how well the application meets the priority. These points are in addition to any points the application earns under the selection criteria for the program:

Applications from institutions of higher education or combinations of institutions that—

(a) Require entering students to have successfully completed at least two years of secondary school foreign language instruction;

(b) Require each graduating student to earn two years of postsecondary credit in a foreign language or have demonstrated equivalent competence in the foreign language;

(c) In the case of a two-year degree granting institution, offer two years of postsecondary credit in a foreign language.

*Supplementary Information:* An institutional grantee shall pay a minimum of 50 percent of the cost of the project for each fiscal year.

*Project Period:* 24 months for single institutions; and 36 months for consortia and associations.

*For Applications or Information Contact:* Christine Corey, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5332. Telephone: (202) 401–9798.

**Program Authority:** 20 U.S.C. 1124.

**84.017A International Research and Studies Program**

*Purpose of Program:* To provide grants to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields to provide full understanding of the places in which the foreign languages are commonly used.

*Eligible applicants:* Public and private agencies, organizations, and institutions; and individuals.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 655 and 660.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

*Priorities:* Under 34 CFR 75.105(c)(2)(i) and 34 CFR 660.34 and 660.10, the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards five points to an application depending upon how well the application meets the priority. These points are in addition to any points the application earns under the selection criteria for the program:

Studies and surveys to assess the use of graduates of programs supported under title VI of the Higher Education Act, as amended, by governmental, educational, and private sector organizations; and other studies assessing the outcomes and effectiveness of programs supported under title VI.

*Project Period:* Up to 36 months; and up to 60 months for projects addressing the priority.

*For Applications or Information Contact:* Jose L. Martinez, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5331. Telephone: (202) 401–9784.

**Program Authority:** 20 U.S.C. 1125.

**84.019A Fulbright-Hays Faculty Research Abroad Program**

**84.022A Fulbright-Hays Doctoral Dissertation Research Abroad Program**

*Purpose of Programs:* (a) The Faculty Research Abroad Program offers opportunities to faculty members of higher education for research and study in modern foreign languages and area studies. (b) The Doctoral Dissertation Research Abroad Fellowship Program provides opportunities for graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

*Eligible Applicants:* Institutions of higher education.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; and (b) The regulations for these programs in 34 CFR parts 662 and 663.

*Priorities:* Under 34 CFR 75.105(c)(3), 34 CFR 663.32(c) (Higher Education Programs in Modern Foreign Language Training and Area Studies—Faculty Research Abroad Fellowship Program), and 34 CFR 662.32(c) (Higher Education Programs in Modern Foreign Language Training and Area Studies—Doctoral Dissertation Research Abroad Fellowship Program) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds only applications that meet this absolute priority:

Research projects that focus on one or more of the following: Africa, East Asia,

Southeast Asia and the Pacific, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (Central and South America and the Caribbean).

**Note:** Applications that propose projects focused on Western Europe will not be funded.

*Project Period:* Three to 12 months for Faculty Research Abroad; and 6 to 12 months for Doctoral Dissertation Research Abroad.

*For Applications or Information Contact:*

For Faculty Research Abroad Program: Eliza Washington, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5331. Telephone: (202) 401–9777.

For Doctoral Dissertation Research Abroad Program: Karla Ver Bryck Block, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–5331. Telephone: (202) 401–9774.

**Program Authority:** 22 U.S.C. 2452(b)(6).

### 84.021A Fulbright-Hays Group Projects Abroad Program

*Purpose of Program:* To provide grants to support overseas projects in training, research, and curriculum development in modern foreign languages and area studies by teachers, students, and faculty engaged in a common endeavor. Projects may include short-term seminars, curriculum development, group research or study, or advanced intensive language projects.

**Note:** Applications for advanced intensive language projects will not be accepted under this competition.

*Eligible Applicants:* Institutions of higher education; State departments of education; nonprofit private educational organizations; and consortia of these types of institutions, departments, and organizations.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 664.

*Priorities:*

*Absolute Priority:* Under 34 CFR 75.105(c)(3) and 34 CFR 664.32 the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds only applications that meet this absolute priority:

Group projects that focus on one or more of the following: Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America and the Caribbean), East Central Europe and Eurasia, and the Near East.

**Note:** Applications that propose projects focused on Western Europe will not be funded.

*Competitive Priority:* Within the absolute priority specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 664.32, gives preference to applications that meet the following competitive priority. The Secretary awards up to five points to an application depending upon how well the application meets the priority. These points are in addition to any points the application earns under the selection criteria for the program:

Short-term seminars that develop and improve foreign language and area studies at elementary and secondary schools.

*Project Period:*

For short-term seminars and curriculum development projects: four to six weeks.

For group research or study projects: two to twelve months.

*For Applications or Information Contact:* Dr. Lungching Chiao, U.S. Department of Education, 600 Independence Avenue, SW, Washington, DC 20202–5332. Telephone: (202) 401–9772.

**Program Authority:** 22 U.S.C. 2452(b)(6).

### 84.120A Minority Science Improvement Program—Institutional, Design, Special, and Cooperative Projects

*Purpose of Program:* To effect long-range improvement in science education at predominantly minority institutions and to increase the flow of under represented ethnic minorities, particularly minority women, into scientific careers.

*Eligible Applicants:*

(a) *For institutional, design, and special projects described in 34 CFR 637.14 (a), (b) and (c):* Public and nonprofit private minority institutions.

**Note:** A minority institution is defined in 34 CFR 637.4(b) as an accredited college or university whose enrollment of a single minority group or combination of minority groups, as defined in 34 CFR 637.4(b), exceeds 50 percent of the total enrollment.

(b) *For special projects described in 34 CFR 637.14(b) and (c):* Non-profit science-oriented organizations; professional scientific societies; and nonprofit accredited colleges and universities that render a needed service to a group of eligible minority institutions, as defined in 34 CFR 637.4(b), or that provide in service training of project directors, scientists, and engineers from eligible minority institutions.

(c) *For cooperative projects:* Groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution, as defined in 34 CFR 637.4(b).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 637.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

*Project Period:* Up to 36 months.

*For Applications or Information Contact:* Dr. Argelia Velez-Rodriguez, U.S. Department of Education, 600 Independence Avenue, SW, Courtyard Suite C–80, Portals Building, Washington, DC 20202–5329. Telephone: (202) 260–3261 or by internet to argelia__velez__rodriguez@ED.GOV. The Department encourages applicants to FAX requests for applications to: (202) 260–7615.

**Program Authority:** 20 U.S.C. 1135b–1135b–3, 1135d–1135d–6.

### 84.153A Business and International Education Program

*Purpose of Program:* To provide grants both to enhance international business education programs and expand the capacity of the business community to engage in international economic activities.

*Eligible Applicants:* Institutions of higher education that have entered into agreements with business enterprises, trade organizations, or associations engaged in international economic activity.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 655 and 661.

*Supplementary Information:* A grantee shall pay a minimum of 50 percent of the cost of the project for each fiscal year.

*Project Period:* 24 months.

*For Applications or Information Contact:* Sarah T. Beaton, U.S. Department of Education, 600 Independence Avenue SW, Washington, DC 20202–5332. Telephone: (202) 401–9798.

**Program Authority:** 20 U.S.C. 1130–1130b.

### 84.220A Centers for International Business Education Program

*Purpose of Program:* To provide grants to eligible applicants to pay the Federal share of the cost of planning, establishing, and operating centers for international business.

*Eligible Applicants:* Institutions of higher education; and combinations of institutions of higher education.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) Because there are no program-specific regulations for this program, applicants are encouraged to read the authorizing statute for the Centers for International Business Education Program, under section 612 of part B, title VI, of the Higher Education Act of 1965, as amended.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses new EDGAR selection criteria in 34 CFR 75.209 and 75.210. Applicants may obtain a copy of these criteria from the individual listed as the information contact for this program. The criteria also will be listed in the application.

*Project Period:* 48 months.

*For Applications or Information Contact:* Susanna C. Easton, U.S. Department of Education, 600 Independence Avenue, SW, Washington, DC 20202–5332. Telephone: (202) 708–4804.

**Program Authority:** 20 U.S.C. 1130–1.

### 84.316 Native Hawaiian Higher Education Program

*Purpose of Program:* To provide direct grants for a program of baccalaureate and postbaccalaureate fellowship assistance to Native Hawaiian students. Program activities may include—(a) Full or partial fellowship support for Native Hawaiian students enrolled at two-or four-year degree-granting institutions of higher education with awards to be based on academic potential and financial need; (b) full or partial fellowship support for Native Hawaiian students enrolled at postbaccalaureate degree-granting institutions of higher education with priority given to providing fellowship support for professions in which Native Hawaiians are under represented and with fellowship awards to be based on academic potential and financial need; (c) counseling and support services for students receiving fellowship assistance under this program; (d) college preparation and guidance counseling at secondary school level for students who may be eligible for fellowship support under this program; (e) appropriate research and evaluation of the activities authorized under this program; and (f) implementation of faculty development programs for the improvement and matriculation of Native Hawaiian students.

*Eligible Applicants:* Native Hawaiian private nonprofit educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language are eligible, as defined in Section 9212 of the Elementary and Secondary Education Act.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) Because there are no program-specific regulations for this program, applicants are encouraged to read the authorizing statute for the Native Hawaiian Higher Education Program under sections 9206 and 9212 of the Elementary and Secondary Education Act.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses new EDGAR selection criteria in 34 CFR 75.209 and 75.210. Applicants may obtain a copy of these criteria from the individual listed as the information contact for this program. The criteria also will be listed in the application.

*Project Period:* Up to 36 months.

*For Applications or Information Contact:* Collie Pollock, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202. Telephone: (202) 708–4804

**Program Authority:** 20 U.S.C. 7905 Sec. 9206.

Dated: August 1, 1997.

**Maureen A. McLaughlin,**

*Acting Assistant Secretary for Postsecondary Education.*

**Appendix**

*Intergovernmental Review of Federal Programs*

This appendix applies to each program that is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each of those States under the Executive Order.

In States that have not established a process or chosen a program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, area-wide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, EO 12372—CFDA# (commenter must insert number—including suffix letter, if any), U.S. Department of Education, Room 6213, 600 Independence Avenue, SW, Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

*State Single Points of Contact*

**Note:** In accordance with Executive Order 12372, this listing represents the designated State Single Points of Contact. Because participation is voluntary some States no longer participate in the process. These include: Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, and Washington. The list of designated State Single Points of Contact was published in the **Federal Register** on August 20, 1996 at 61 FR 43133.

[FR Doc. 97–20716 Filed 8–4–97; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

## Bonneville Power Administration

## Methow/Wenatchee Coho Supplementation Project

**AGENCY:** Bonneville Power Administration (BPA), Department of Energy (DOE).

**ACTION:** Notice of Floodplain and Wetlands Involvement.

**SUMMARY:** This notice announces BPA's proposal to construct rearing/acclimation ponds for coho salmon in floodplain and wetlands located in Okanogan County, Washington. A total of three to five fish acclimation sites will be developed in the Methow River basin on two tributaries, the Twisp and

Chewuch rivers, and the Methow mainstem. The Methow is a tributary to the Columbia River and is located in North Central Washington. It is the intent of the BPA, the Yakama Indian Nation and Washington Department of Fish and Wildlife to restore extirpated coho salmon to the mid-Columbia River basin. By experimenting with releases at different life stages and release locations using acclimation ponds, more knowledge will be gained about the benefits of acclimation and the rearing of hatchery-influenced fish in more natural environments. This knowledge will help resource managers to make better decisions about how best to implement supplementation to further the goal of rebuilding coho salmon populations throughout the mid-Columbia River basin.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. After BPA issues the assessment, a floodplain statement of findings will be published if necessary, in the **Federal Register**.

**DATES:** Comments are due to the address below no later than August 20, 1997.

**ADDRESSES:** Submit comments to Communications, Bonneville Power Administration—ACS–7, P.O. Box 12999, Portland, Oregon, 97212. Internet address: comment@bpa.gov.

**FOR FURTHER INFORMATION CONTACT:** Yvonne E. Boss—ECP–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–3596, fax number 503–230–5699.

**SUPPLEMENTARY INFORMATION:** Because the experimental strategy is to utilize acclimation sites that reflect a strong natural influence such as river side channels, canals, and existing ponds, some sites may be located in the floodplain and/or wetlands. The typical ponds constructed at each site will have earthen bottoms with concrete inlet and outlet structures and PVC water pipelines. Several sites on the Methow mainstem between the town of Carlton and the Lost River, T33N, R21E, Section 3 (approximately RM 20 to RM 60) are being considered. Other potential sites in the floodplain are located on the Twisp River, T33N, R21E, Section 10, T33N, R21E, Section 8 (RM 1 to RM 25) and the Chewuch River, (RM 0 to RM 1). To provide rearing/acclimation space for the coho salmon, as much as 35,700 cubic feet of earth may be removed from each site to construct the ponds in accordance with biological criteria.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on July 28, 1997.

**Thomas C. McKinney,**

*NEPA Compliance Office.*

[FR Doc. 97–20557 Filed 8–4–97; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP97–667–000]**

## El Paso Natural Gas Company; Notice of Application

July 30, 1997.

Take notice that on July 25, 1997, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP97–667–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations for permission and approval to abandon the firm transportation and delivery of 1,140,000 Mcf per day of natural gas to Pacific Gas and Electric Company (PG&E) at the Topock Delivery Point, effective January 1, 1998, all as more fully set forth in the application on file with the Commission and open to public inspection.

El Paso states that El Paso and PG&E are parties to a Transportation Service Agreement dated October 10, 1990, as amended and restated November 1, 1993 (TSA). El Paso notes that Article V, Section 5.2 of the TSA provides for a primary term ending December 31, 1997, and thereafter from year to year until terminated by written notice given no less than twelve months in advance by either party to the other. El Paso indicates that PG&E, by letter dated June 20, 1995, gave notification to El Paso of its intention to terminate the TSA as of December 31, 1997. El Paso further notes that because the transportation and delivery service provided to PG&E is a converted certificated gas sales arrangement, in accordance with the preamble of the TSA, El Paso requires Section 7(b) permission and approval to abandon the firm transportation and delivery of up to 1,140,000 Mcf per day of natural gas to PG&E at the Topock Delivery Point.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 20, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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 protectants 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 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 El Paso to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–20531 Filed 8–4–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–157–005]**

## Gas Transport, Inc.; Notice of Compliance Filing

July 30, 1997.

Take notice that on July 25, 1997, Gas Transport, Inc. (GTI) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

*Effective August 1, 1997*

Second Revised Sheet No. 1
Third Revised Sheet No. 162
Second Revised Sheet No. 162A

Original Sheet No. 162B

*Effective November 1, 1997*

Fourth Revised Sheet No. 162
Third Revised Sheet No. 162A

GTI states that these tariff sheets are being filed to comply with the letter order issued by the Commission on June 27, 1997.

GTI states that copies of this filing were served upon its jurisdictional customers and the Regulatory Commissions of the states of Ohio and West Virginia.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–20534 Filed 8–4–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ID–2958–001]**

## Dennis R. Hendrix; Notice of Filing

July 30, 1997.

Take notice that on June 18, 1997, Dennis R. Hendrix filed an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Director, Duke Energy Corporation
Director, Texas Commerce Bank, N.A.

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, 888 First 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 and 385.214). All such motions or protests should be filed on or before August 11, 1997. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–20524 Filed 8–4–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–3612–000]**

## Illinois Power Company; Notice of Filing

July 30, 1997.

Take notice that on July 7, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a power Sales Tariff, Service Agreement under which North American Energy Conservation will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 20, 1997.

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, 888 First 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 and 18 CFR 385.214). All such motions or protests should be filed on or before August 11, 1997. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–20523 Filed 8–4–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–178–005]**

## Kern River Gas Transmission Co., Notice of Compliance Filing

July 30, 1997.

Take notice that on July 25, 1997, Kern River Gas Transmission (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets in conformity with Part 154 of the Regulations of the Federal Energy Regulatory Commission to be effective on August 1, 1997:

Third Revised Sheet No. 70
First Revised Sheet Nos. 128–139
Sheet Nos. 140–150

Kern River States that the purpose of this filing is to incorporate GISB Standard 4.3.6 into Kern River's tariff. This GISB Standard was approved by the Commission in Order No. 587–C.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–20535 Filed 8–4–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP96–790–003]**

## Nautilus Pipeline Company, L.L.C.; Notice of Compliance Filing

July 30, 1997.

Take notice that, on July 17, 1997, Nautilus Pipeline Co., L.L.C. (Nautilus), 5555 San Felipe, Houston, Texas 77056, filed its FERC Gas Tariff, in order to comply with the Commission's March 26, 1997 order in Docket Nos. CP96–790–000, CP96–791–000, and CP96–792–000 (78 FERC ¶ 61,325), in which

the Commission issued certificates to Nautilus: (1) authorizing it to construct and operate approximately 101 miles of 30-inch diameter pipeline from a platform in Ship Shoal Block 207, offshore Louisiana, to Exxon U.S.A. Inc.'s Garden City Gas Processing Plant in St. Mary Parish, Louisiana; and (2) authorizing Nautilus to provide open-access transportation services for others.

Nautilus is a limited liability company, organized under the laws of the State of Delaware, with its principal place of business located in Houston, Texas. Nautilus' owners include: (1) Sailfish Pipeline Company, L.L.C., a wholly-owned subsidiary of Leviathan Gas Pipeline Partners, L.P. (25.67%); (2) Marathon Gas Transmission, Inc., an affiliate of Marathon Oil Company (24.33%); and (3) Shell Seahorse Company, an affiliate or Shell Offshore, Inc. (50.00%).

Nautilus' compliance filing is on file with the Commission and open to public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–20525 Filed 8–4–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–429–000]**

## Ozark Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

July 30, 1997.

Take notice that on July 25, 1997, Ozark Gas Transmission System (Ozark) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 106 and Original Sheet No. 106A, to become effective September 1, 1997.

Ozark states that the revised tariff sheets implement an open tap policy for deliveries out of its system in compliance with the Commission's June 25, 1997 Order in Docket No. EC97–20. Specifically, Ozark states that it will install promptly metering and interconnection facilities in those instances when new facilities are necessary to accommodate the delivery of gas under its FTS Rate Schedule out of its system for delivery to a Local Distribution Company, municipality, electric utility, Independent Power Producer or direct end user, if the Shipper agrees to reimburse Ozark for the costs incurred for such installation.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First 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 must be filed in accordance with Section 154.210 of the Commission's Regulations. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–20537 Filed 8–4–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–427–000]**

## Williams Natural Gas Company; Notice of Request for Waiver of Filing Requirement

Take notice that on July 23, 1997, Williams Natural Gas Company (WNG) tendered for filing a request for waiver of filing requirement pursuant to Article 14.2(g) of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

WNG states that it implemented Article 14.2 of the General Terms and Conditions of its tariff pursuant to Commission order issued April 9, 1996 in Docket No. RP96–173. Article 14.2(g) requires WNG to file a statement within sixty days of the end of the twelve-month recovery period after implementation of Article 14.2, reflecting: (1) The aggregate amount of GSR Costs incurred and allocated to be collected during each twelve-month period following implementation of Article 14.2; and (2) the aggregate amount of GSR Costs deemed collected during each twelve-month period under Rate Schedule ITS as determined pursuant to Article 14.2(f).

WNG further states that Article 12.1 and Article 14.2(h) of its tariff provide that GSR costs allocated to ITS service are deemed collected after fixed costs allocated to ITS service are collected. Because of this provision, WNG cannot report GSR recovery from ITS service for the twelve month period following implementation of the provisions of Article 14.2 until the end of the twelve-month period ending September 30, 1997, as the amount of GSR recovery is tied to the calculation of ITS revenues and fixed cost recovery. Therefore, WNG requests waiver of the reporting requirements of Article 14.2(g) of its tariff for as long as Article 12 requires the reporting of ITS revenues and as long as the collection of GSR costs allocated to ITS service as long as the collection of GSR costs allocated to ITS service is dependent upon the collection of fixed costs allocated to ITS service. WNG states that it will make this report along with the report required by Article 12.

WNG filed for information purposes a copy of Schedule C from its refund report in Docket No. RP95–136, filed April 15, 1997. Footnote 4 of schedule C reports the amount of GSR costs allocated to Rate Schedule ITS and the amount of GSR costs collected for the period June, 1996 through September, 1996.

WNG states that a copy of its filing was served on all of WNG's jurisdictional customers and interested state commissions.

Any persons desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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 must be filed on or before August 6, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–20536 Filed 8–4–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP97–660–000]**

## Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

July 30, 1997.

Take notice that on July 24, 1997, Williston Basin Interstate Pipeline

Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP97–660–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to utilize an existing tap to effectuate natural gas transportation deliveries to Montana-Dakota Utilities Co. (Montana-Dakota), for ultimate use by additional residential customers in Roosevelt County, Montana. Williston Basin makes such request under its blanket certificate issued in Docket No. CP82–487–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin states that it received a request from Montana-Dakota, a local distribution company, for authorization to add additional residential customers to an existing transmission line tap located in Roosevelt County, Montana. The estimated additional volume to be delivered is 220 Mcf per year. Williston Basin is proposing to use the existing residential farm tap to effectuate additional natural gas transportation deliveries to Montana-Dakota for other than right-of-way grantor use. Williston Basin indicates that the volumes to be delivered are within the contractual entitlements of the customer, and that the proposed volumes will be provided under Williston Basins Rate Schedule FT–1.

It is averred that the proposed service will have no significant effect on Williston Basin's peak day or annual requirements.

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 § 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–20529 Filed 8–4–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP92–236–009]**

## Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

July 30, 1997.

Take notice that on July 25, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing certain revised tariff sheets to First and Second Revised Volume Nos. 1 and Original Volume Nos. 1–A, 1–B and 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets were filed in compliance with the Commission's ''Order on Rehearing'' issued July 19, 1996 and the Commission's ''Order on Initial Decision on Remanded Issue'' issued June 11, 1997 in Docket Nos. RP92–236–000, et al., as more fully described in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–20533 Filed 8–4–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP97–659–000]**

## Wisconsin Public Service Corporation; Notice of Application

July 30, 1997.

Take notice that on July 22, 1997, Wisconsin Public Service Corporation (WPSC), 700 North Adams Street, P.O. Box 19001, Green Bay, Wisconsin 54307–9001 filed an application pursuant to Section 7(f) of the Natural Gas Act (NGA), requesting a determination of a service area within which WPSC may, without further Commission authorization, enlarge or expand its facilities, all as more fully described in the application that is on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection.

WPSC states that it is a public utility engaged in, among other things, the business of distributing natural gas to customers for residential, commercial, and industrial use. WPSC requests a service area determination consisting of 16 miles of 8-inch diameter pipeline and the associated right of way from the Great Lakes Gas Transmission Limited Partnership pipeline at the Watersmeet city gate in the town of Watersmeet, Michigan, to a proposed WPSC city gate station in Conover, Wisconsin. WPSC will hold a 21.67 percent interest in both the Watersmeet city gate station and the proposed 8-inch diameter pipeline. Wisconsin Electric Power Company (WEPCO) will hold the remaining interest in the facilities.

In addition to the service area determination, WPSC also requests: (a) A finding that WPSC qualifies as a local distribution company (LDC) for purposes of Section 311 of the Natural Gas Policy Act of 1978 (NGPA); (b) a waiver of the Commission's regulatory requirements, including reporting and accounting requirements ordinarily applicable to natural gas companies under the NGA and NGPA; and (c) such further relief as the Commission may deem appropriate.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 20, 1997, 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 211 or 214 of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this 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 a grant of the certificate is required by the public convenience and necessity. If motion for leave to intervene is timely filed or if the Commission and 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 WPSC to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–20528 Filed 8–4–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP97–563–000]**

## Michigan Gas Storage Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Cranberry Lake Lateral 63 East Project and Request for Comments on Environmental Issues

July 30, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Cranberry Lake Lateral 63 East Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

*Summary of the Proposed Project*

Michigan Gas Storage Company (MGSCo) proposes to replace and upgrade 1.3 miles of its Cranberry Lake Lateral 63 East. To accomplish this activity MGSCo proposes to: (1) Remove 0.6 mile of 6-inch-diameter piping and replace it in the same trench with 8-inch-diameter piping; (2) abandon in place 0.1 mile of 4-inch-diameter piping; (3) install a 2-inch-diameter pipe within the abandoned 4-inch-diameter pipe; (4) upgrade the existing 0.6 mile of 8-inch-diameter pipeline to make it piggable by removing stab-in branch connections at well laterals as well as any other obstructions from the pipe interior; and (5) install a pig launcher and pig receiver at either end of the reconfigured 8-inch-diameter piping segment. The resulting lateral would consist of about 1.2 miles of 8-inch-diameter and 0.1 mile of 2-inch-diameter piping.

All of the facilities are located in Clare County, Michigan. The proposed project would allow for more efficient and safe operation of MGSCo's Cranberry Lake Storage Field.

The proposed facilities would cost about $257,400.

The general location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

*Land Requirements for Construction*

Replacement and upgrading of the Cranberry Lake Lateral 63 East, including temporary work spaces, would require about 3.5 acres. Of the 3.5 acres, about 1.7 acres exist as a two-track sand road which has no vegetation. Of the remaining 1.8 acres, about 1.7 acres of land would require tree trimming and vegetation removal and about 0.1 acre of land would require tree removal.

MGSCo would utilize its abandoned Plant 1 Compressor Station for receiving and distributing materials during construction. The total acreage for the lay-down area is about 3 acres. This area has been previously devoted to industrial used and no further disturbance is required

*The EA Process*

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Endangered and threatened species
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

*Currently Identified Environmental Issues*

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by MGSCo. This preliminary list of issues may be changed based on your comments and our analysis.

- Cranberry Lake Lateral 63 East is located near the Kirkland's Warbler National Wildlife Refuge.
- Cranberry Lake Lateral 63 East is located within the Gladwin Forest Area of the Au Sable State Forest.

*Public Participation*

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

[1] Michigan Gas Storage Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

- Send two copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, D.C., 20426;
- Label one of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP97–563–000; and
- Mail your comments so that they will be received in Washington, D.C. on or before August 30, 1997.

*Becoming an Intervenor*

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties not seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your scoping comments considered.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–20527 Filed 8–4–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP97–92–001]**

## Transcontinental Gas Pipe Line Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Mobile Bay Project and Request for Comments on Environmental Issues

July 30, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities, about 75.66 miles of 24- and 30-inch-diameter pipeline, 30,000 horsepower (hp) of compression, an offshore junction platform and connecting facilities at another (nonjurisdictional) platform, proposed in the Mobile Bay Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

*Summary of the Proposed Project*

Transcontinental Gas Pipe Line Corporation (Transco) wants to expand the capacity of its facilities in the Gulf of Mexico and Alabama to transport an additional 350 million cubic feet of natural gas per day (Mmcfd) to the interstate market from sources offshore in the Gulf of Mexico. Transco seeks authority to construct and operate:

- 15,000 horsepower (hp) of compression at new Compressor Station 83 in Mobile County, Alabama;
- 15,000 hp of additional compression at Compressor Station 82 in Mobile County, Alabama;
- 19.08 miles of 30-inch-diameter pipeline from existing Compressor Station 82 in Mobile County, Alabama to a new offshore junction platform in Mobile Block 822 (this segment involves approximately 4.00 miles of onshore pipeline);
- a new offshore junction platform in Mobile Block 822, including a 24-inch-sphere launcher and appurtenant facilities;
- 56.58 miles of 24-inch-diameter pipeline from the new offshore junction platform in Mobile Block 822 to a new platform (owned by SOCO Offshore, Inc. (SOCO)) in Main Pass Viosca Knoll Block 261; and
- a 24-inch-sphere launcher, measurement equipment, riser pipe and appurtenant facilities on SOCO's new platform in Main Pass Viosca Knoll Block 261.

The location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

*Land Requirements for Construction*

Construction of the proposed onshore facilities would require about 56.4 acres of land. Following construction, about 15.7 acres would be maintained as new aboveground facility sites. The remaining 40.7 acres of land would be restored; 17.4 acres would be allowed to revert to its former use and 23.3 acres would be permanent pipeline right-of-way.

*The EA Process*

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the onshore portion of the proposed project under these general headings: [3]

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will

[1] Transcontinental Gas Pipe Line Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] The Commission intends to adopt the environmental documents created by the U.S. Department of the Interior, Minerals Management Service (MMS) and the U.S. Army Corps of Engineers (COE) for the offshore facilities.

be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

*Currently Identified Environmental Issues*

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Transco. This preliminary list of issues may be changed based on your comments and our analysis.

- Two federally listed endangered or threatened species may occur in the onshore portions of the proposed project area.
- A total of 16.3 acres of agricultural land would be affected.
- There is the potential for noise impact due to the new compression at the new and existing stations.
- A nonjurisdictional processing plant will be constructed in conjunction with the interstate pipeline facilities.

We expect to adopt the environmental reviews done by the COE and the MMS covering wetland and offshore issues. The COE will also be addressing the crossing of Dauphin Island by directional drilling.

*Nonjurisdictional Facilities*

Williams Field Services Company (WFS) will construct and operate a 600 MMcfd nonjurisdictional processing plant (including a 350 MMcfd separation facility) immediately upstream of Compressor Station 82. The plant will be designed to remove liquids and liquefiables from the offshore pipeline and deliver interstate pipeline quality natural gas to the suction side of Transco's Compressor Station 82.

SOCO will construct a new production/gathering platform in Main Pass Viosca Knoll Block 261. We will not be addressing this facility in our EA because we will adopt the analysis done by the MMS.

*Public Participation*

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP97–92–001; and
- Mail your comments so that they will be received in Washington, D.C. on or before August 29, 1997.

*Becoming an Intervenor*

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your comments considered.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–20526 Filed 8–4–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Filed With the Commission

July 30, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Settlement Agreement.

b. *Project No:* 2916–004.

c. *Date Filed:* June 26, 1997.

d. *Applicant:* East Bay Municipal Utility District.

e. *Name of Project:* Lower Mokelumne River.

f. *Location:* Mokelumne River, Amador, Calaveras, and San Joaquin Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jon A. Myers, Manager, Water Resources Planning, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607–4240, (510) 278–1121.

i. *FERC Contact:* John Schnagl, (202) 219–2661.

j. *Comment Date:* September 10, 1997.

k. *Description of Application:* On March 10, 1981, the Commission issued a license for the Lower Mokelumne River Project to the East Bay Municipal Utility District (EBMUD). On July 1, 1991, pursuant to reserved authority in the license, Commission staff initiated a license reopener proceeding to determine if modifications to project facilities or operations were necessary for the conservation and development of fish and wildlife resources in the Mokelumne River. In November 1993, the Commission released a final environmental impact statement (FEIS), recommending modifications to the license. Recommended modifications included among other items, new minimum flow and minimum pool elevation requirements, ramping rates, studies on pulse flows, instream habitat enhancements, and further studies and monitoring to define mitigation needs for salmon and trout in the lower river.

In 1994, EBMUD participated in settlement discussions with the U.S. Fish and Wildlife Service (FWS), the California Department of Fish and Game (CDFG), and other parties to resolve issues of dispute in the proceeding. In 1995, 1996, and 1997 EBMUD, the FWS, and the CBFG continued negotiations. These parties have filed a Settlement Agreement (SA) with the Commission. The SA is under consideration in the proceeding before the Commission as an alternative to the actions recommended in the FEIS issued in 1993.

The SA includes changes in instream flows, development of a Lower Mokelumne River Partnership to develop and implement measures to protect and enhance anadromous fish, development of a Lower Mokelumne River Stakeholders Group to recommend ecosystem protection and improvement, EBMUD establishing a $2 million Partnership Fund, EBMUD providing $12.5 million to expand and upgrade the Mokelumne River Fish Hatchery, coordination by the parties of fishery and habitat studies and monitoring programs, and development of a process to measure the success of flow requirements, non-flow measures and other actions contained in the SA.

The SA would be in effect for the duration of the current license term.

Copies of the SA may be obtained from EDMUD or from the Commission's public file in this proceeding.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

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 Procedures, 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 comments date for 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, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Application 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, if will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.,*

[FR Doc. 97–20532 Filed 8–4–97; 8:45 am]

**BILLING CODE 6717–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5869–2]**

### Announcement of Stakeholders Meeting on Arsenic in Drinking Water

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of stakeholders meeting.

**SUMMARY:** The Environmental Protection Agency (EPA) will be holding a one and a half day public meeting on September 11 and 12, 1997. The purpose of this meeting is to present information on EPA's plans for activities to develop a proposed National Primary Drinking Water Regulation (NPDWR) for arsenic under the Safe Drinking Water Act (SDWA) as amended, and solicit public input on major technical and implementation issues, and on preferred approaches for continued public involvement. This meeting is a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water Program. These meetings were initiated as part of the Drinking Water Program Redirection efforts to help refocus EPA's drinking water priorities and to support strong, flexible partnerships among EPA, States, Tribes, local governments, and the public. At the upcoming meeting, EPA is seeking input from state and Tribal drinking water programs, the regulated community (public water systems), public health organizations, academia, environmental and public interest groups, engineering firms, and other stakeholders on a number of issues related to developing the NPDWR for arsenic. EPA encourages the full participation of stakeholders throughout this process.

**DATES:** The stakeholder meeting on arsenic in drinking water will be held on Thursday, September 11, 1997 from 9:00 a.m. to 5:00 p.m. EDT and Friday, September 12, 1997 from 8:00 a.m. to 1:00 p.m. EDT.

**ADDRESSES:** To register for the meeting, please contact the Safe Drinking Water Hotline at 1–800–426–4791 between 9:00 a.m. and 5:30 p.m. EDT. Those registered for the meeting by Tuesday, September 2, 1997 will receive an agenda, logistics sheet, and background materials prior to the meeting. Members of the public who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline. Conference lines will be allocated on the basis of first-reserved, first served. Members of the public who cannot participate via conference call or in person may submit comments in writing by October 10, 1997, in order for comments to be included in the meeting summary, to Irene Dooley, at the U.S. Environmental Protection Agency, 401 M St, SW (4607), Washington, DC 20460 or dooley.irene@epamail.epa.gov. The meeting will be held in Room 6226 at the Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to developing the NPDWR for arsenic and other EPA activities under the Safe Drinking Water Act, contact the Safe Drinking Water Hotline at 1–800–426–4791. A block of rooms is being held at the Holiday Inn National Airport (703–416–1600) for September 10th and 11th at the government rate of $124 per night. Registrants must make their own reservations by August 13, 1997 and mention ''EPA Arsenic Meeting'' to guarantee the room rate.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Arsenic (As) is a naturally occurring element found in the human body and is present in food, water, and air. Arsenic in drinking water occurs in ground water and surface water and is associated with certain natural geologic conditions, as well as with contamination from human activities. Arsenic ingestion is linked to skin cancer and arsenic inhalation to lung cancer. In addition, arsenic ingestion seems to be associated with cancers of the kidney, bladder, liver, lung, and other organs. Water primarily contains inorganic arsenic species ($As^{V+}$ and $As^{III+}$), which tend to be more toxic than organic forms.

In 1976 EPA issued a National Interim Primary Drinking Water Regulation for arsenic at 50 parts per billion (ppb; *ug*/L). Under the 1986 amendments to SDWA, Congress directed EPA to publish Maximum Contaminant Level Goals (MCLGs) and promulgate National Primary Drinking Water Regulations (NPDWRs) for 83 contaminants, including arsenic. When EPA failed to meet the statutory deadline for promulgating an arsenic regulation, a citizens' group filed suit to compel EPA to do so. EPA entered into a consent decree to issue the regulation. EPA held internal workgroup meetings throughout 1994, addressing risk assessment, treatment, analytical methods, arsenic occurrence, exposure, costs, implementation issues, and regulatory

options before deciding in early 1995 to defer the regulation in order to better characterize health effects.

On August 6, 1996, Congress amended the SDWA, adding section 1412(b)(12)(A) which requires, in part, that EPA propose a NPDWR for arsenic by January 1, 2000 and issue a final regulation by January 1, 2001. The current maximum contaminant level (MCL) of 50 ug/L remains in effect until the effective date of the revised rule.

The 1996 amendments to the SDWA also directed EPA to develop by February, 1997, a comprehensive arsenic research plan to assess health risks associated with exposure to low levels of arsenic. In December 1996, EPA announced the availability of the arsenic research plan, and the public had an opportunity to comment on the paper at a scientific peer review meeting in January, 1997. EPA reported to Congress in late January that the plan was publicly available and would be revised after consideration of the final report of the scientific peer review group, which was subsequently published May 8, 1997. In conducting the studies in the arsenic research plan, EPA will consult with the National Academy of Sciences, other Federal agencies, and other interested public and private parties.

### B. Request for Stakeholder Involvement

EPA intends for the proposed NPDWR for arsenic to incorporate the best available science, risk assessment, treatment technologies, occurrence data, cost/benefit analyses, and stakeholder input on technical and implementation issues.

The stakeholders meeting will cover a broad range of issues including: (1) Regulatory process; (2) arsenic risk assessment (exposure, health assessment, national occurrence); (3) key technical assessments (treatment technologies, treatment residuals, cost, analytical methods); (4) small system concerns; and (5) future stakeholder involvement. Background materials on arsenic in drinking water issues will be sent to all registered participants in advance of the meeting.

EPA has announced this public meeting to hear the views of stakeholders on EPA's plans for activities to develop a NPDWR for arsenic. The public is invited to provide comments on the issues listed above and other issues related to the arsenic in drinking water regulation during the September 11 and 12, 1997 meeting or in writing by October 10, 1997.

Dated: July 30, 1997.

**Elizabeth Fellows,**

*Acting Director, Office of Ground Water and Drinking Water, Environmental Protection Agency.*

[FR Doc. 97–20580 Filed 8–4–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5868–8]**

### National Advisory Council for Environmental Policy and Technology—Total Maximum Daily Load Committee: Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public meeting.

**SUMMARY:** Under the Federal Advisory Committee Act, PL 92–463, EPA gives notice of a three day meeting of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Total Maximum Daily Load (TMDL) Committee. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The TMDL Committee has been charged to provide recommendations for actions which will lead to a substantially more effective TMDL program. This meeting is being held to enable the Committee and EPA to hear the views and obtain the advice of a widely diverse group of stakeholders in the National Water Program.

In conjunction with the three day meeting, the FACA Committee members and the EPA will host two meetings designed to afford the general public greater opportunity to express its views on TMDL and water related issues.

**DATES:** The three day public meeting will be held on September 3–5, 1997, in Portland, Oregon, at the Fifth Avenue Suites, 506 S.W. Washington at Fifth Avenue. The full Committee meeting begins on Wednesday, September 3, 1997, at 7:30 a.m. with adjournment scheduled for 5:30 p.m.. The meeting on Thursday, September 4, 1997, will reconvene at 7:30 a.m. and is scheduled to adjourn at 3:00 p.m. On Friday, September 5, 1997, the Committee begins deliberations at 7:30 a.m. and is scheduled to conclude at 4:00 p.m.

The two public input sessions are scheduled in conjunction with the full Committee meeting in the same location. The first will occur on September 3, 1997, from 7:30–9:00 p.m. The second will occur on September 4, 1997, from 3:30–5:00 p.m.

**FUTURE MEETING DATES:** The Committee has scheduled one more meeting: January 21–23, 1998 in Salt Lake City, Utah.

**ADDRESSES:** Materials or written comments may be transmitted to the Committee through Corinne S. Wellish, Designated Federal Officer, NACEPT/TMDL, U.S. EPA, Office of Water, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division (4503F), 401 M Street, SW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Corinne S. Wellish, Designated Federal Officer for the Total Maximum Daily Load Committee at 202–260–0740.

Dated: July 28, 1997.

**Corinne S. Wellish,**

*Designated Federal Officer*

[FR Doc. 97–20581 Filed 8–4–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5869–1]**

### Announcement of Stakeholders Meeting on National Primary Drinking Water Regulation for Radon-222

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of stakeholders meeting.

**SUMMARY:** The Environmental Protection Agency (EPA) will be holding a one-day public meeting on Tuesday, September 2, 1997, in San Francisco, CA. The purpose of this meeting is to present information on EPA's plans for activities to develop a proposed National Primary Drinking Water Regulation (NPDWR) for radon-222, and solicit public input on major technical and implementation issues, and on preferred approaches for continued public involvement. This upcoming meeting is the second of a series of stakeholders meetings on the NPDWR for radon. These meetings were initiated as part of the Drinking Water Program Redirection efforts to help refocus EPA's drinking water priorities and to support strong, flexible partnerships among EPA, States, local governments, and the public. At the upcoming meeting, EPA is seeking input from state drinking water and radon programs, the regulated community (public water systems), public health and safety organizations, environmental and public interest groups, and other stakeholders on a number of issues related to developing the NPDWR for radon. EPA encourages the full participation of stakeholders throughout this process.

**DATES:** The stakeholder meeting on the NPDWR for radon will be held on Tuesday, September 2, 1997 from 9:30 a.m. to 5:00 p.m PST. Check-in will begin at 9:00 a.m.

**ADDRESSES:** To register for the meeting, please contact the Safe Drinking Water Hotline at 1-800–426–4791. Those registered for the meeting by August 22, 1997 will receive an agenda and background materials prior to the meeting. Members of the public who cannot participate may submit comments in writing by September 16, 1997 to Sylvia Malm, at the U.S. Environmental Protection Agency, 401 M. St., SW (4607), Washington, DC 20460. The meeting will be held at the Environmental Protection Agency Region IX Office Building in Meeting Room C, second floor, 75 Hawthorne Street, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:** For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to developing the NPDWR for radon and other EPA activities under the Safe Drinking Water Act, contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on radon in indoor air, contact the National Safety Council's National Radon Hotline at 1–800–SOS–RADON.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On July 18, 1991 (56 FR 33050), EPA proposed a Maximum Contaminant Level Goal (MCLG) and National Primary Drinking Water Regulation (NPDWR) for radon and other radionuclides in public water supplies. EPA proposed to regulate radon at 300 pCi/L. Commenters on the 1991 proposed NPDWR for radon raised several concerns, including cost of implementation, especially for small systems, and the larger risk to public health from radon in indoor air from soil under buildings.

On August 6, 1996, Congress passed amendments to the Safe Drinking Water Act (SDWA), which establishes a new charter for the nation's public water systems, States, and EPA in protecting the safety of drinking water. The amendments [§ 1412(b)(13)] direct EPA to develop an MCLG and NPDWR for radon. EPA is required to (1) withdraw the 1991 proposed MCLG and NPDWR for radon-222; (2) arrange for the National Academy of Sciences (NAS) to conduct an independent risk assessment for radon in drinking water and an independent assessment of risk reduction benefits from various mitigation measures to reduce radon in indoor air; (3) publish a radon health risk reduction and cost analysis for possible radon Maximum Contaminant Levels (MCLs) for public comment by February, 1999; (4) propose an MCLG and NPDWR for radon by August, 1999; and (5) publish a final MCLG and NPDWR for radon by August, 2000.

If the MCL is ''more stringent than necessary to reduce the contribution to radon in indoor air from drinking water to a concentration that is equivalent to the national average concentration of radon in outdoor air,'' EPA is also required to promulgate an alternative MCL and publish guidelines for state multimedia mitigation programs to mitigate radon levels in indoor air. The alternative MCL would ''result in a contribution of radon from drinking water to radon levels in indoor air equivalent to the national average concentration of radon in outdoor air.'' States may develop and submit to EPA for approval a multimedia mitigation program to mitigate radon levels in indoor air. EPA shall approve State multimedia mitigation programs if they are expected to achieve equivalent or greater health risk reduction benefits than compliance with the MCL. If EPA approves a State multimedia mitigation program, public water supply systems within the State may comply with the alternative MCL. If EPA does not approve a State program, or the State does not propose a program, public water supply systems may propose multimedia mitigation programs to EPA, under the same procedures outlined for States.

### B. Request for Stakeholder Involvement

EPA intends for the proposed NPDWR for radon to incorporate the best available science, treatment technologies, occurrence data, cost/benefit analyses, and stakeholder input on technical and implementation issues. EPA has evaluated comments on the 1991 proposed NPDWR for radon and will be considering those comments in developing the regulation.

The meeting will cover a broad range of issues including: (1) Radon in drinking water MCL development (treatment technologies, occurrence, analytical methods); (2) multimedia mitigation program; and (3) stakeholder involvement processes. Background materials on radon in drinking water issues will be sent to all registered participants in advance of the meeting. Issues for discussion and stakeholder input will be based on the materials provided and include (but may not be limited to) the following:

(1) Any new information or data;

(2) Issues and concerns related to rule development;

(3) Issues and concerns related to implementing a multimedia mitigation program from the perspective of your state, water systems, public health and safety organizations, environmental and public interest groups, and the public; and

(4) Recommendations on the most beneficial points in the process for stakeholder input and preferred approaches for stakeholder input.

EPA has announced this public meeting to hear the views of stakeholders on EPA's plans for activities to develop a NPDWR for radon. The public is invited to provide comments on the issues listed above and other issues related to the radon in drinking water regulation during the September 2, 1997 meeting or in writing by September 16, 1997. EPA is in the process of planning another stakeholders meeting in the New England region in the Fall of 1997.

Dated: July 30, 1997.

**Elizabeth Fellows,**

*Acting Director, Office of Ground Water and Drinking Water, Environmental Protection Agency.*

[FR Doc. 97–20579 Filed 8–4–97; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5868–9]**

## Notice of Meeting, Board of Scientific Counselors (BOSC) Subcommittee Review of National Risk Management Research Laboratory (NRMRL)

**AGENCY:** Environmental Protection Agency (EPA).

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2), notice is hereby given that the Environmental Protection Agency (EPA), Office of Research and Development (ORD), Board of Scientific Counselors Subcommittee will meet to review the National Risk Management Research Laboratory, August 18–19, 1997, at the Andrew W. Breidenbach Environmental Research Center, 26 W. Martin Luther King Drive, Room 120–126 and will start at 8:00 a.m. and recess at 5:00 p.m. on August 18, 1997. On August 19, 1997, a writing session will start at 8:00 a.m. and adjourn at 1:00 p.m. All times are eastern time. The meeting is open to the public. Any member of the public wishing to make comments at the meeting should contact Shirley Hamilton, Designated Federal

Official, Office of Research and Development (8701R), 401 M Street, SW, Washington, D.C. 20460; by telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to three minutes. Anyone desiring a draft BOSC agenda may fax their request to Shirley R. Hamilton, (202) 564–2444.

**FOR FURTHER INFORMATION CONTACT:** Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA(MC8701R), 401 M Street, SW, Washington D.C. 20460, (202) 564–6853.

Dated: July 23, 1997.

**J.K. Alexander,**

*Acting Assistant Administrator for Research and Development.*

[FR Doc. 97–20573 Filed 8–4–97; 8:45 am]

**BILLING CODE 6560–50–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–44642; FRL–5734–3]**

### TSCA Chemical Testing; Receipt of Test Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's receipt of test data on acetone (CAS No. 67–64–1) and ethyl acetate (CAS No. 141–786). These data were submitted pursuant to enforceable testing consent agreements/orders issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460. (202) 554–1404; TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public by EPA in accordance with procedures specified in section 4(d) of TSCA.

#### I. Test Data Submissions

Test data for acetone were submitted by the Chemical Manufacturers Association (CMA) pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000. The submission includes a final report entitled ''Subchronic Operant Behavior Study of Acetone by Inhalation in Rats.'' Also received in conjunction with this submission is a report entitled ''Schedule-Controlled Operant Behavior: Positive Control Study of Amphetamine and Chlorpromazine.'' EPA received both reports on June 20, 1997. Acetone is an organic solvent used in the production of methacrylic acid and ester, methyl isobutyl ketone, bisphenol A, and as a solvent for industrial coatings.

Test data for ethyl acetate were submitted by the Chemical Manufacturers Association Oxo Process Panel pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000. This submission includes final reports entitled: (1) ''Subchronic Operant Behavior Study of Ethyl Acetate by Inhalation in Rats,'' and (2) ''Subchronic Inhalation Neurotoxicity Study of Ethyl Acetate in Rats.'' Also received in conjunction with this submission is a report entitled ''Schedule-Controlled Operant Behavior: Positive Control Study of Amphetamine and Chlorpromazine.'' EPA received this data submission on July 7, 1997. Ethyl acetate is used as a solvent for lacquers and enamel coatings, as a solvent for inks, as a plastics solvent, and in chemical synthesis.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

#### II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44642). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202) 260–5069 or e-mail: oppt.ncic@epamail.epa.gov.

**Authority:** 15 U.S.C. 2603.

#### List of Subjects

Environmental protection, Test data.

Dated: July 28, 1997.

**Charles M. Auer,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 97–20563 Filed 8-4-97; 8:45 am]

**BILLING CODE 6560–50–F**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

July 30, 1997.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Persons wishing to comment on this information collection should submit comments October 6, 1997.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.:* 3060–0347.

*Title:* Section 97.311, Spread Spectrum.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households.

*Number of Respondents:* 25.

*Estimate Hour Per Response:* 1 hour.

*Frequency of Response:* Recordkeeping requirement.

*Total Annual Burden:* 25 hours.

*Needs and Uses:* The recordkeeping requirement contained in Section 97.311 is necessary to document all spread spectrum transmissions by amateur radio operators. It consists of a technical description of the transmission signal, pertinent parameters describing the transmitted signal, general description of information, method and frequencies used for station identification and date of beginning and date of ending use of each type of transmitted signal. This requirement is necessary so that quick resolution of any harmful interference problems can be achieved and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–20517 Filed 8–4–97; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

July 31, 1997.

**SUMMARY:** The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Persons wishing to comment on this information collection should submit comments October 6, 1997.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov. Draft copies of these documents are also available via the FCC's Fax-on-Demand system by calling (202) 418–0177 from the handset of a fax machine and entering the document retrieval numbers indicated in the Supplementary Information Section for each form. The forms are also available in Wordperfect 5.1 and PDF via the internet from the FCC's Internet forms page at http://www.fcc.gov/formpage.html.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* 3060–XXXX.

*Title:* Long Form Application for Authorization in the Actionable Services.

*Form No.:* FCC 601.

*Type of Review:* New Collection.

*Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 43,719.

*Estimated Time Per Response:* 2 hours.

*Total Annual Burden:* 87,438 hours.

*Needs and Uses:* FCC 601 will be used as the general application (long form) by winners of FCC auctions, such as 800 MHz, 220 MHz, LMDS, Paging, IVDS and 39 GHz. While the Commission is currently seeking approval only for the forementioned purpose, the Commission also anticipates continued use of FCC 601 for future auctions (market-based licensing) yet to be decided, as well as eventually expanding the uses of the form to replace other existing FCC forms licensing various radio services (site-by-site licensing).

This long form application is a consolidated application form and will be utilized as part of the Universal Licensing System currently under development. The goal of producing a consolidated form is to create a form with a consistent ''look and feel'' that maximizes the collection of data and minimizes narrative responses, free-form attachment, and free-form letter requests. A consolidated application form will allow common fields, questions, and statements to reside in one place and allow the technical data specific to each service to be captured in its own form or schedule.

FCC 601 will consist of a Main Form containing administrative information and a series of Schedules used to file technical information. Auction winning respondents will be required to submit FCC 601 electronically. There are no application fees, electronic filing fees or frequency coordination costs associated with filing of this form by auction winning respondents.

The data collected on this form includes the applicant's Taxpayer Identification Number. Use of Taxpayer Identification Number in the Universal Licensing System will allow pre-filling of data by searching the database and displaying all pertinent data associated to a given TIN, as well as for Debt Collection purposes. It will also improve and lessen the burden of the volume of data the public would have to enter for later filings.

*Document Retrieval Number:* 000601.

*OMB Approval Number:* 3060–XXXX.

*Title:* Ownership Form.

*Form No.:* FCC 602.

*Type of Review:* New Collection.

*Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 10,000.

*Estimated Time Per Response:* 2 hours.

*Total Annual Burden:* 20,000 hours.

*Needs and Uses:* FCC 602 will serve as a cover sheet to the ownership package and be used in addition to the extensive ownership collection information required by rule for each radio service. It will be used in conjunction with new applications, Transfers of Control, Assignments of Authorizations, and any other ownership information updates required by rule. While the Commission is currently seeking approval only for the forementioned purpose, the Commission also anticipates continued use of FCC 602 for future auctions (market-based licensing) yet to be decided, as well as eventually expanding the uses of the form to

replace other existing FCC forms/ methods of collecting ownership information.

FCC 602 is a new collection that eliminates lengthy ownership information being filed each time an applicant files. It will be a one-time annual filing of information for only the lone real party of interest that controls the license(s).

This ownership form is a consolidated form and will be utilized as part of the Universal Licensing System currently under development. The goal of producing a consolidated form is to create a form with a consistent ''look and feel'' that maximizes the collection of data and minimizes narrative responses, free-form attachment, and free-form letter requests. A consolidated ownership form will allow common fields, questions, and statements to reside in one place and allow the technical data specific to each service to be captured in its own form or schedule.

Auction winning respondents will be required to submit FCC 602 electronically. There are no application fees or electronic filing fees associated with filing of this form by auction winning respondents.

The data collected on this form includes the applicant's Taxpayer Identification Number. Use of Taxpayer Identification Number in the Universal Licensing System will allow pre-filling of data by searching the database and displaying all pertinent data associated to a given TIN, as well as for Debt Collection purposes. It will also improve and lessen the burden of the volume of data the public would have to enter for later filings.

*Document Retrieval Number:* 000602.

*OMB Approval Number:* 3060–XXXX.

*Title:* Application for Assignment of Authorization for Actionable Services.

*Form No.:* FCC 603.

*Type of Review:* New Collection.

*Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 2,000.

*Estimated Time Per Response:* 4 hours.

*Total Annual Burden:* 8,000 hours.

*Needs and Uses:* FCC 603 will be used to file for Assignment of Authorization. It will consist of a Main Form and a section to detail the call signs . While the Commission is currently seeking approval for use of the form for only actionable service purposes, the Commission also anticipates continued use of FCC 603 for future auctions (market-based licensing) yet to be decided, as well as eventually expanding the uses of the form to replace other existing FCC forms/ methods of collecting assignment of authorization information.

This assignment form is a consolidated form and will be utilized as part of the Universal Licensing System currently under development. The goal of producing a consolidated form is to create a form with a consistent ''look and feel'' that maximizes the collection of data and minimizes narrative responses, free-form attachment, and free-form letter requests. A consolidated assignment form will allow common fields, questions, and statements to reside in one place and allow the technical data specific to each service to be captured in its own form or schedule.

Actionable services respondents will be required to submit FCC 603 electronically. There are no application fees or electronic filing fees associated with filing of this form by these respondents.

The data collected on this form includes the applicant's Taxpayer Identification Number. Use of Taxpayer Identification Number in the Universal Licensing System will allow pre-filling of data by searching the database and displaying all pertinent data associated to a given TIN, as well as for Debt Collection purposes. It will also improve and lessen the burden of the volume of data the public would have to enter for later filings.

*Document Retrieval Number: 000603.*

*OMB Approval Number:* 3060–XXXX.

*Title:* Application for Transfer of Control for Actionable Services.

*Form No.:* FCC 604.

*Type of Review:* New Collection.

*Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 1,500.

*Estimated Time Per Response:* 3 hours.

*Total Annual Burden:* 4,500 hours.

*Needs and Uses:* FCC 604 will be used to file for Transfer of Control for actionable services. It will consist of a Main Form and a section to detail the transferred call signs. The form will only be filed by the Licensee (Transferor) on behalf of the Transferor and the Transferee. While the Commission is currently seeking approval for use of the form for only actionable service purposes, the Commission also anticipates continued use of FCC 604 for future auctions (market-based licensing) yet to be decided, as well as eventually expanding the uses of the form to replace other existing FCC forms/ methods of collecting transfer of control information.

This transfer of control form is a consolidated form and will be utilized as part of the Universal Licensing System currently under development. The goal of producing a consolidated form is to create a form with a consistent ''look and feel'' that maximizes the collection of data and minimizes narrative responses, free-form attachment, and free-form letter requests. A consolidated transfer of control form will allow common fields, questions, and statements to reside in one place and allow the technical data specific to each service to be captured in its own form or schedule.

Actionable services respondents will be required to submit FCC 604 electronically. There are no application fees or electronic filing fees associated with filing of this form by these respondents.

The data collected on this form includes the applicant's Taxpayer Identification Number. Use of Taxpayer Identification Number in the Universal Licensing System will allow pre-filling of data by searching the database and displaying all pertinent data associated to a given TIN, as well as for Debt Collection purposes. It will also improve and lessen the burden of the volume of data the public would have to enter for later filings.

*Document Retrieval Number:* 000604.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–20684 Filed 8–4–97; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

July 29, 1997.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control

number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before September 4, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* 3060–0771.

*Title:* Section 5.56, Procedure for Obtaining a Special Temporary Authorization in the Experimental Radio Service.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit; not-for-profit institutions; state or local or tribal government.

*Number of Respondents:* 500.

*Estimated Time Per Response:* 1 hour.

*Cost to Respondents:* N/A.

*Total Annual Burden:* 500 hours.

*Needs and Uses:* In cases where a need is shown for operation of an authorized experimental station for a limited time only, a request for a Special Temporary Authorization (STA) to operate transmitting equipment will be accepted under the conditions set for in 47 CFR 5.56 (a), (b), and (c). The request may be filed as an informal application, normally by letter from the applicant, and shall contain the information specified in Section 5.56. The data supplied by the applicant is used by the staff of the Experimental Licensing Branch, Office of Engineering and Technology, to determine: (1) If the applicant is eligible for an experimental STA; (2) the purpose of the experiment; (3) compliance with the requirement of part 5 of the rules; and (4) if the proposed operation will cause interference to existing stations. An experimental STA could not be granted without the information collected under Section 5.56(b).

*OMB Approval Number:* 3060–0298.

*Title:* Tariffs (Other than Tariff Review Plan)—part 61.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 2,000.

*Estimated Time Per Response:* 202 hours (avg).

Cost to Respondents: $2,878,200.

*Total Annual Burden:* 682,555 hours.

*Needs and Uses:* Part 61 is designed to ensure that all tariffs filed by common carriers are formally sound, well organized, and provide the Commission and the public with sufficient information to determine the justness and reasonableness as required by the Act, of the rates, terms and conditions in those tariffs. Consideration is being given to examine the technical and legal feasibility of filing by electronic means for all carriers. Currently, all nondominant carriers, both domestic and international, are required to file tariffs on diskettes. Further, pursuant to an order In the Matter of Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96–187, adopted January 29, 1997, released January 31, 1997, FCC 97–23, the Commission established a mandatory electronic filing system for all local exchange carriers. Authority was delegated to the Chief, Common Carrier Bureau to establish a program to implement this electronic filing system. (See OMB control number 3060–0745).

*OMB Approval Number:* 3060–0764.

*Title:* Regulation of International Accounting Rates (CC Docket No. 90–337).

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 30.

*Estimated Time Per Response:* 16 hours.

*Cost to Respondents:* $180,000.

*Total Annual Burden:* 480 hours.

*Needs and Uses:* CC Docket No. 90–337 implemented rules making it easier for U.S. carriers engaged in international telecommunications to negotiate lower accounting rates. Any carrier that interconnects an international private line to the U.S. public switched network will report on an annual basis its arrangements for the interconnection of such private lines except those private lines that terminate in countries that have been determined to offer equivalent private line resale opportunities to U.S. carriers. The information collection will provide the Commission with data to make a determination whether or not to allow a carrier to enter into an agreement that is outside the scope of its current rules. The information will be used by the Commission in reviewing the impact, if any, that alternative settlement arrangements have on its international settlements policy. Additionally, the information will also enhance the ability of the Commission and interested parties to monitor for anticompetitive effects in the U.S. market for international service, thus increasing competitive options for U.S. carriers and resulting in lower prices and greater choices for U.S. consumers. The information collection will enable the Commission to promote competitive behavior, improve economic performance, and preserve the integrity of its accounting rate policies. The information collection also will enable the Commission and interested parties to determine whether or not the competitive safeguards are sufficient to protect U.S. carriers and consumers against harmful discriminatory practices by foreign carriers.

*OMB Approval Number:* 3060–0106.

*Title:* Section 43.61, Reports of Overseas Telecommunications Traffic.

*Type of Review:* Extension of a currently approved collection.

Respondents: Business or other for-profit.

*Number of Respondents:* 248.

*Estimated Time Per Response:* Semi-Annual report #1–40 hours per response; Semi-Annual report #2–40 hours per response; Minutes of Inbound/Outbound Traffic—8 hours per response; Existing collection—15 hours per response.

*Cost to Respondents:* $96,000.

*Total Annual Burden:* 7,554 hours.

*Needs and Uses:* The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The reported data is useful for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance

of payments in international communications services, and market analysis purposes. The reported data enables the Commission to fulfill its regulatory responsibilities.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–20548 Filed 8–4–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting; Open Commission Meeting Thursday, August 7, 1997

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Thursday, August 7, 1997, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, N.W., Washington, D.C.

| Item No. | Bureau | Subject |
|---|---|---|
| 1 | Cable Services | Title: Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996 and Video Programming Accessibility (MM Docket No. 95–176).<br>Summary: The Commission will consider action concerning closed captioning requirements for video programming. |

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media which includes, large print/type; digital disk; an audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is httpp://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418–0460, or TTY (202) 418–1398; fax numbers (202) 418–2809 or (202) 418–7286.

Dated: July 31, 1997.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–20690 Filed 8–4–97; 12:33 pm]

BILLING CODE 6712–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

July 29, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

**Federal Communications Commission**

*OMB Control No.:* 3060–0775.

*Expiration Date:* 07/31/2000.

*Title:* Separate Affiliate Requirement for Independent Local Exchange Carrier (LEC) Provision of International Interexchange Services—47 CFR Sections 64.1901–64.1903.

*Form No.:* N/A.

*Respondents:* Business or other for profit.

*Estimated Annual Burden:* 10 respondents; 6056 hours per response (avg.); 60,560 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $1,003,000.

*Frequency of Response:* On occasion.

*Description:* In the Second Report and Order and Third Report and Order issued in CC Docket No. 96–149 and CC Docket No. 96–61 (released 4/18/97), the Commission imposes a recordkeeping requirement on independent local exchange carriers (LECs). Independent LECs wishing to offer international, interexchange services must comply with the separate affiliate requirements of the *Competitive Carrier Fifth Report and Order* in order to do so. One of these requirements is that the independent LEC's international, interexchange affiliate must maintain books of account separate from such LECs' local exchange and other activities. This regulation does not require that the affiliate maintain books of account that comply with the Commission's Part 32 rules; rather, it refers to the fact that as a separate legal entity, the international, interexchange affiliate must maintain its own books of account in the ordinary course of its business. This recordkeeping requirement is used by the Commission to ensure that independent LECs providing international, interexchange services through a separate affiliate are in compliance with the Communications Act, as amended, and with Commission policies and regulations. Compliance is mandatory.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–20516 Filed 8–4–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection(s) Approved by Office of Management and Budget

July 30, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Jerry Cowden, Federal Communications Commission, (202) 418–0447.

**Federal Communications Commission**

*OMB Control No.:* 3060–0017.
*Expiration Date:* 07/31/2000.
*Title:* Application for a Low Power TV, TV Translator or TV Booster Station License.
*Form Number:* FCC 347.
*Estimated Annual Burden:* 1,000 hours; 2.5 hours per respondent; 400 respondents.
*Description:* FCC Form 347 is required to be filed when applying for a Low Power Television, TV Translator or TV Booster Station License. This form will be revised to add the new requirements regarding antenna tower registration. This unique antenna registration number identifies an antenna structure and must be used on all filings related to the antenna structure. Several questions will be added to the engineering portion of the FCC 347 to collect this information. This requirement was approved by OMB under control number 3060–0714. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit. Data is then extracted from FCC 347 for inclusion in the subsequent license to operate the station.

*OMB Control No.:* 3060–0029.
*Expiration Date:* 07/31/2000.
*Title:* Application for TV Broadcast Station License.
*Form Number:* FCC 302-TV.
*Estimated Annual Burden:* 113 hours; 20 hours per respondent (1.5 hours respondent/18.5 hours consulting engineer); 75 respondents.
*Description:* Licensees and permittees of TV broadcast stations are required to file FCC Form 302-TV to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. The Commission will be adding the antenna registration information that was approved by OMB under control number 3060–0714 to this form. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC 302-TV for inclusion in the subsequent license to operate the station.

*OMB Control No.:* 3060–0188.
*Expiration Date:* 07/31/2000.
*Title:* Section 73.3550—Requests for new or modified call sign assignments.
*Form Number:* None.
*Estimated Annual Burden:* 1,050 hours; 1 hour per respondent (700 respondents 1 hour; 700 respondents 0.5 hour consultation time with attorney plus 0.5 hour attorney time beyond consultation); 1,400 respondents.
*Description:* Section 73.3550 requires that a licensee, permittee, assignee or transferee of a broadcast station file a letter with the Commission when requesting a new or modified call sign. When an application for transfer or assignment of license is involved and the call sign conforms to that of a commonly owned station not part of the transaction, the request must contain a written consent from the existing owner to retain the conforming call sign. In addition, where a requested call sign, without the ''-FM,'' ''-TV'' or ''-LP'' suffix, would conform to the call sign of any other non-commonly owned station(s) operating in a different service, the applicant must obtain and submit with the call sign request the written consent of the licensee(s) of such stations. Section 73.3550 also permits any low power television (LPTV) station to request a four-letter call sign after receiving its construction permit. All initial LPTV construction permits will continue to be issued with a five-character LPTV call sign. In addition to the letter request, an LPTV station must submit a certification under Section 74.783 which is submitted separately for OMB approval. The data is used by FCC staff to ensure that the call sign requested is not already in use by another station and that the proper ''K'' or ''W'' designation is used in accordance with the station location (east or west of the Mississippi River).

*OMB Control No.:* 3060–0246.
*Expiration Date:* 07/31/2000.
*Title:* Section 74.452—Equipment changes.
*Form Number:* None.
*Estimated Annual Burden:* 13 hours; 0.5 hour per respondent; 25 respondents.
*Description:* Section 74.452 requires that licensees of remote pickup stations notify the Commission of any equipment changes that are deemed desirable or necessary (without departing from the station authorization) upon completion of such changes. The data is used by FCC staff to assure that the changes made comply with the rules and regulations.

*OMB Control No.:* 3060–0254.
*Expiration Date:* 7/31/2000.
*Title:* Section 74.433—Temporary authorizations.
*Form Number:* None.
*Estimated Annual Burden:* 3 hours; 1 hour per respondent (0.25 hour respondent time in consultation with attorney plus 0.75 hour attorney time beyond consultation); 12 respondents.
*Description:* Section 74.433 requires that a licensee of a remote pickup station make an informal written request to the FCC when requesting temporary authorization for operations of a temporary nature that cannot be conducted in accordance with Section 74.24. The data is used by FCC staff to insure that the temporary operation of a remote pickup station will not cause interference to existing stations.

*OMB Control No.:* 3060–0342.
*Expiration Date:* 07/31/2000.
*Title:* Section 74.1284—Rebroadcasts.
*Form Number:* None.
*Estimated Annual Burden:* 100 hours; 1 hour per respondent; 100 respondents.
*Description:* Section 74.1284 requires that the licensee of an FM Translator station obtain prior consent from the primary FM broadcast station or other FM translator before rebroadcasting programs. In addition, the licensee must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. The data is used by FCC staff to update records and to assure compliance with FCC rules and regulations.

*OMB Control No.:* 3060–0483.
*Expiration Date:* 07/31/2000.
*Title:* Section 73.687—Transmission system requirements.
*Form Number:* None.
*Estimated Annual Burden:* 6 hours; 1 hour per respondent; 6 respondents.
*Description:* Section 73.687(e)(3) requires TV broadcast stations operating

on Channels 14 and 69 to take special precautions to avoid interference to adjacent spectrum land mobile operations. This requirement applies to all new Channel 14 and 69 TV broadcast stations and those authorized to change channel, increase effective radiated power (ERP), change directional antenna characteristics such that ERP increases in any azimuth direction or change location, involving an existing or proposed channel 14 or 69 assignment. Section 73.687(e)(4) requires these stations to submit evidence to the FCC that no interference is being caused before they will be permitted to transmit programming on the new facilities. The data is used by the FCC to ensure proper precautions have been taken to protect land mobile stations from interference. It will also both increase and improve service to the public by broadcasters and land mobile services operating in certain parts of the spectrum.

*OMB Control No.:* 3060–0611.

*Expiration Date:* 07/31/2000.

*Title:* Section 74.783—Station identification.

*Form Number:* None.

*Estimated Annual Burden:* 26 hours; 0.166 hour per respondent; 151 respondents.

*Description:* Section 74.783(b) requires television translator stations, whose station identification is made by the television station whose signals are being rebroadcast by the translator, to furnish current information with regard to the translator's call letters and location, and the name, address and telephone number of the licensee to be contacted in the event of malfunction of the translator. Section 74.783(e) requires a low power television (LPTV) station to submit a certification with its request for a four-letter call sign. This certification must include a statement that it has placed a firm equipment order, which includes a down payment for such major components as a transmitter or a transmitting antenna, that physical construction is under way at the transmitter site, or that the station has been constructed. The certification requirement will effectively enable Commission staff to award four-letter call signs to those permittees most likely to be constructed and operated.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–20518 Filed 8–4–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1177–DR]**

### Idaho; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Idaho, (FEMA–1177-DR), dated June 13, 1997, and related determinations.

**EFFECTIVE DATE:** July 22, 1997.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Idaho dated June 13, 1997, is hereby amended to include Individual Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 13, 1997:

Bingham and Jefferson Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 97–20570 Filed 8–4–97; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1177–DR]**

### Idaho; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Idaho (FEMA–1177–DR) dated June 13, 1997, and related determinations.

**EFFECTIVE DATE:** July 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Idaho is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 13, 1997:

Butte County for Public Assistance and Hazard Mitigation.

Madison County for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 97–20571 Filed 8–4–97; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1180–DR]**

### Wisconsin; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–1180–DR), dated July 7, 1997, and related determinations.

**EFFECTIVE DATE:** July 28, 1997.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Wisconsin is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 1997:

Washington County for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 97–20572 Filed 8–4–97; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL RESERVE SYSTEM

### 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. The notices also will 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 August 20, 1997.

**A. Federal Reserve Bank of San Francisco** (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

*1. Richard A. Lagomarsino*, Ramona Lagomarsino, Ramona Lagomarsino Family Limited Partnership, Robert J. Lagomarsino, all of Ventura, California, and Norma M. Lagomarsino, Catherine S. Wood, and Jack W. Wood, acting in concert, all of Carpinteria, California; to acquire voting shares of Americorp, Ventura, California, and thereby indirectly acquire American Commercial Bank, Ventura, California.

Board of Governors of the Federal Reserve System, July 31, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–20586 Filed 8-4-97; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-19675) published on page 40088 of the issue for Friday, July 25, 1997.

Under the Federal Reserve Bank of Minneapolis heading, the entry for BCB Bancorp, Inc., Chippewa Falls, Wisconsin, is revised to read as follows:

**A. Federal Reserve Bank of Minneapolis** (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

*1. Northwest Wisconsin Bancorp, Inc., and its wholly-owned subsidiary, BCB Bancorp, Inc.*, both of Chippewa Falls, Wisconsin; to engage *de novo* through their subsidiary, Heartland Data Center, Inc., Cameron, Wisconsin, in providing data processing services to local, non-affiliate financial institutions, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

Comments on this application must be received by August 11, 1997.

Board of Governors of the Federal Reserve System, July 31, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–20585 Filed 8-4-97; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 1997.

**A. Federal Reserve Bank of Cleveland** (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

*1. Peoples Financial Corp, Inc.*, Ford City, Pennsylvania; to retain a total 17.2 percent of the voting shares of Elderton State Bank, Elderton, Pennsylvania.

**B. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. First National of Nebraska, Inc.*, Omaha, Nebraska, and its subsidiary, First National of Colorado, Inc., Fort Collins, Colorado; to acquire 100 percent of the voting shares of Platte Valley National Bank, Grand Island, Nebraska, a *de novo* bank, and First National of Nebraska, Lincoln, Nebraska, a *de novo* bank.

**C. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. ANB Corporation*, Terrell, Texas; to acquire 40.58 percent of the voting shares of Lakeside Bancshares, Inc., Rockwall, Texas, and thereby indirectly acquire Lakeside National Bank, Rockwall, Texas.

Board of Governors of the Federal Reserve System, July 31, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–20587 Filed 8-4-97; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 20, 1997.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

*1. BB&T Corporation*, Winston-Salem, North Carolina; to acquire Craigie Incorporated, Richmond, Virginia, and thereby engage in underwriting and

dealing in, to a limited extent, all types of debt and equity securities, other than interests in open end investment companies; *See J.P. Morgan & Co., Inc., et al., 75 Fed. Res. Bull. 192 (1989) and Citicorp, et al., 73 Fed. Res. Bull. 473 (1987)*; underwriting and dealing in bank-eligible securities, pursuant to § 225.28(b)(8) of the Board's Regulation Y; providing securities brokerage services on either a stand-alone or full-service basis, pursuant to § 225.28(b)(7) of the Board's Regulation Y; acting as agent for issuers and holders in the private placement of various types of securities with financially sophisticated counterparties in a non-public offering, pursuant to § 225.28(b)(7) of the Board's Regulation Y; buying and selling on the order of investors as a riskless principal, pursuant to § 225.28(b)(7) of the Board's Regulation Y; making, acquiring or servicing loans or other extensions of credit, including purchasing and selling such loans and extensions of credit in the secondary market, and engaging in mortgage banking activities, pursuant to § 225.28(b)(1) of the Board's Regulation Y; acting as an investment or financial advisor to the extent of (i) serving as the advisory company for a mortgage or real estate investment trust; (ii) serving as an investment adviser to an investment company registered under the 1940 Act, including sponsoring, organizing and managing a closed-end investment company; (iii) providing portfolio investment advice; (iv) furnishing general economic information and advice, general economic statistical forecasting services and industry studies; and/or (v) providing financial advice to state and local governments, such as with respect to the issuance of their securities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; providing advice and acting as arranger in connection with merger, acquisition, divestiture and financial transactions, including public and private financings, loan syndications, interest rate and currency swaps, interest rate caps and similar transactions and/or furnishing evaluation and fairness opinions in connection with merger, acquisition, and similar transactions, pursuant to §§ 225.28(b)(6) and (b)(7) of the Board's Regulation Y; acting as agent or broker with respect to interests in loan syndications, interest rate and currency swaps, interest rate caps, floors and collars, and options on such instruments, pursuant to § 225.28(b)(7) of the Board's Regulation Y; leasing personal or real property or acting as agent, broker or adviser in leasing such property, pursuant to § 225.28(b)(3) of the Board's Regulation Y; providing management consulting advice to non-affiliated depository institutions, pursuant to § 225.28(b)(9) of the Board's Regulation Y; engaging in futures, forward and option contracts on bank-eligible securities for hedging purposes, pursuant to § 225.28(b)(8) of the Board's Regulation Y; engaging in securities credit activities, pursuant to the Federal Reserve's Regulation T (covering credit by brokers and dealers), including acting as a ''conduit'' or ''intermediary'' in securities borrowing and lending, pursuant to § 225.28(b)(7) of the Board's Regulation Y; and serving as the general partner of and holding equity interests in certain limited partnerships that would be exempt from registration under the 1940 Act, *See Meridian Bancorp, Inc., 80 Fed. Res. Bull. 736 (1994)*.

**B. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. C B & T, Inc.*, McMinnville, Tennessee; to acquire CBT Insurance, Inc., Smithville, Tennessee, and thereby continue to engage in insurance activities, pursuant to § 225.28(b)(11) of the Board's Regulation Y. The proposed activity will be conducted throughout the state of Tennessee.

Board of Governors of the Federal Reserve System, July 31, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–20584 Filed 8-4-97; 8:45 am]

**BILLING CODE 6210-01-F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

*Proposed Projects 1.* Voluntary Industry ''Partner'' Survey to Implement Executive Order 12862—The Department of Health and Human Services plans to conduct mail surveys of its contractors in each agency to obtain feedback for improving acquisition products and services—Respondents: Contractors of the Department; Annual Responses: 2400; Average Burden per Response: 12 minutes; Total Annual Burden: 480 hours

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, S.W., Washington, DC, 20201. Written comments should be received within 60 days of this notice.

Dated: July 30, 1997.

**Dennis P. Williams,**

*Deputy Assistant Secretary, Budget.*

[FR Doc. 97–20569 Filed 8–4–97; 8:45 am]

**BILLING CODE 4150–04–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97N–0311]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection provisions relating to the regulation of FDA's current good manufacturing practice

(CGMP) and related regulations for blood and blood components.

**DATES:** Submit written comments on the collection of information by October 6, 1997.

**ADDRESSES:** Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**CGMP and Related Regulations for Blood and Blood Components—Parts 606 and 640 (21 CFR Parts 606 and 640)—(OMB Control Number 0910–0116)—Reinstatement**

Under the statutory requirements contained in the Public Health Service Act (42 U.S.C. 262), no blood, blood component, or derivative may move in interstate commerce unless: (1) It is propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license; (2) the product complies with regulatory standards designed to ensure safety, purity, and potency; and (3) it bears a label plainly marked with the product's proper name, its manufacturer, and expiration date.

The CGMP and related regulations implement FDA's statutory authority to ensure the safety, purity, and potency of blood and blood components. The information collection requirements in the CGMP regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components. These requirements establish accountability and traceability in the processing and handling of blood and blood components and enable FDA to perform meaningful inspections. The recordkeeping requirements serve preventative and remedial purposes. The disclosure requirements identify the various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back to its original source. The reporting requirements inform FDA of any deviations that occur and that may require immediate corrective action.

Section 606.100(b) requires that written standard operating procedures (SOP's) be maintained for the collection, processing, compatibility testing, storage and distribution of blood and blood components used for transfusion and manufacturing purposes. Section 606.100(c) requires the review of all pertinent records to a lot or unit of blood prior to release of the lot or unit. Any unexplained discrepancy or failure of a lot or unit of final product to meet any of its specifications must be thoroughly investigated, and the investigation, including conclusions and followup, must be recorded. Section 606.110(a) requires a physician to certify in writing that the donor's health permits plateletpheresis or leukapheresis if a variance from additional regulatory standards for a specific product is used when obtaining the product from a specific donor for a specific recipient. Section 606.151(e) requires that records of expedited transfusions in life-threatening emergencies be maintained. So that all steps in the collection, processing, compatibility testing, storage and distribution, quality control, and transfusion reaction reports and complaints for each unit of blood and blood components can be clearly traced, § 606.160 requires that legible and indelible contemporaneous records of each significant step be made and maintained for no less than 5 years. Section 606.165 requires that distribution and receipt records be maintained to facilitate recalls, if necessary. Section 606.170(a) requires records to be maintained of any reports of complaints of adverse reactions as a result of blood collection or transfusion. Each such report must be thoroughly investigated, and a written report, including conclusions and followup, must be prepared and maintained. Section 606.170(b) requires that fatal complications of blood collections and transfusions be reported to FDA as soon as possible and that a written report shall be submitted within 7 days. In addition to the CGMP's in part 606, there are regulations in part 640 that require additional standards for blood and blood components: §§ 640.3(a) and (f), 640.4(a), 640.25(b)(4) and (c)(1), 640.27(b), 640.31(b), 640.33(b), 640.51(b), 640.53(c), 640.56(b) and (d), 640.61, 640.63(b)(3), (e)(1) and (e)(3), 640.65(b)(2), 640.66, 640.71(b)(1), 640.72, 640.73, and 640.76(a) and (b). The information collection requirements and estimated burdens for these regulations are included in the part 606 burden estimates, as described below.

The recordkeeping requirements for §§ 640.3(a)(1), 640.4(a)(1), and 640.66, which address the maintenance of SOP's, are included in the estimate for § 606.100(b); the recordkeeping requirements for § 640.27(b), which addresses the maintenance of donor health records for plateletpheresis, is included in the estimate for § 606.110(a); and the recordkeeping requirements for §§ 640.3(a)(2), 640.3(f), 640.4(a)(2), 640.25(b)(4) and (c)(1), 640.31(b), 640.33(b), 640.51(b), 640.53(c), 640.56(b) and (d), 640.61, 640.63(b)(3), (e)(1), and (e)(3), 640.65(b)(2), 640.71(b)(1), 640.72, and 640.76(a) and (b), which address the maintenance of various records, are included in the estimate for § 606.160. The reporting requirement in § 640.73, which addresses the reporting of fatal donor reactions, is included in the estimate for § 606.170(b).

Respondents to this collection of information are registered blood

establishments. There are an estimated 3,021 FDA registered blood collection facilities in the United States that annually collect an estimated 23,500,000 units of whole blood and source plasma. Of the 3,021 registered establishments, 1,799 establishments perform pheresis collections and 278 establishments perform transfusions. There are also an estimated 4,500 Health Care Financing Administration registered transfusion services. The recordkeeping chart reflects the estimate that 95 percent of the recordkeepers which collect 98 percent of the blood supply had developed SOP's as part of their normal business practice. Establishments may minimize burdens associated with the CGMP and related regulations by using model SOP's developed by blood organizations. These blood organizations represent almost all of the registered establishments.

FDA estimates the burden of this information collection as follows:

ESTIMATED ANNUAL REPORTING BURDEN

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 606.170(b) | 42 | 1 | 42 | 8 | 336 |

There are no capital costs or operating and maintenance costs associated with this information collection.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 606.100(b) | 151 | 1 | 151 | 24 | 3,624 |
| 606.100(c) | 151 | 3.6 | 550 | 3.6 | 550 |
| 606.110(a) | 90 | 5 | 450 | 2.5 | 225 |
| 606.151(e) | 239 | 12 | 2,868 | 1 | 239 |
| 606.160 | 151 | 3,112 | 470,000 | 1,556 | 234,956 |
| 606.165 | 151 | 3,112 | 470,000 | 258 | 38,958 |
| 606.170(a) | 376 | 12 | 4,512 | 12 | 4,512 |

There are no capital costs or operating and maintenance costs associated with this information collection.

Dated: July 28, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–20495 Filed 8-4-97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 95N–0155]**

### Bio-Components, Inc.; Revocation of U.S. License No. 1160

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the revocation of U.S. License No. 1160, which includes the establishment license and the product licenses for the manufacture of Source Plasma and Source Leukocytes, issued to Bio-Components, Inc. (BCI). BCI did not respond to a notice of opportunity for a hearing on a proposal to revoke its licenses.

**DATES:** The revocation of U.S. License No. 1160 is effective August 5, 1997.

**FOR FURTHER INFORMATION CONTACT:** Annette A. Ragosta, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

**SUPPLEMENTARY INFORMATION:** FDA is revoking the establishment license (U.S. License No. 1160) and the product licenses issued to Bio-Components, Inc., 440 North Beach St., Daytona Beach, FL 32114, for the manufacture of Source Plasma and Source Leukocytes. The revocation is based on the failure of BCI, and its responsible management to conform to the applicable standards established in the license and to the applicable Federal regulations designed to ensure the continued safety, purity, and potency of the manufactured product (see § 601.5(b)(4) (21 CFR 601.5(b)(4))).

In a letter dated May 13, 1994, FDA informed BCI of the agency's intent to revoke the firm's license and its intent to issue an opportunity for a hearing on the proposed revocation. In the **Federal Register** of January 30, 1996 (61 FR 3040), FDA published a notice of opportunity for a hearing on the proposed revocation of the license under § 12.21(b) (21 CFR 12.21(b)), as provided in § 601.5(b). As described in the notice of opportunity for a hearing, the grounds for the proposed license revocation were based on the results of an FDA inspection of BCI conducted between January 21, 1993, and February 12, 1993. FDA determined that the deviations documented during the January and February 1993 inspection constituted a danger to the public health and accordingly suspended BCI's license in a letter dated March 19, 1993. FDA subsequently determined that BCI demonstrated careless disregard for the applicable regulations and the applicable standards in its license due to, among other things, the firm's past history of noncompliance and the firm's failure to submit an adequate corrective action plan. Due to this evidence of willfulness, FDA did not provide BCI with further opportunity to demonstrate or achieve compliance. Documentation in support of the proposed revocation had been placed on file for public examination with the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

The notice of opportunity for a hearing provided BCI with 30 days to submit a written request for a hearing, as specified in § 12.21(b), and 60 days to submit any data or information justifying a hearing. The notice provided other interested persons with 60 days to submit written comments on

the proposed revocation action. BCI did not submit, within the 30-day time period, a written request for a hearing on the proposed revocation of its license. The 30-day time period, prescribed in the notice of opportunity for a hearing and in the regulations, may not be extended. No other written comments on the proposed revocation were received within the prescribed 60 days specified in the notice of opportunity for a hearing.

Accordingly, under 21 CFR 12.38, section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.67), U.S. License No. 1160, issued to Bio-Components, Inc., is revoked effective August 5, 1997.

This notice is issued and published under 21 CFR 601.8.

Dated: July 28, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–20496 Filed 8-4-97; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 96N–0015]**

### Personal Blood Storage of Memphis, Inc.; Revocation of U.S. License No. 1131

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 1131) and the product licenses issued to Personal Blood Storage of Memphis, Inc., for the manufacture of Whole Blood, Red Blood Cells, Plasma, and Platelets. Personal Blood Storage of Memphis, Inc., did not respond to a notice of opportunity for a hearing on a proposal to revoke its licenses.

**DATES:** The revocation of the establishment license (U.S. License No. 1131) and the product licenses is effective August 5, 1997.

**FOR FURTHER INFORMATION CONTACT:** Gloria J. Hicks, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

**SUPPLEMENTARY INFORMATION:** FDA is revoking the establishment license (U.S. License No. 1131) and the product licenses issued to Personal Blood Storage of Memphis, Inc., formerly located at 5182 East Raines Rd., Memphis, TN 38118, for the manufacture of Whole Blood, Red Blood Cells, Plasma, and Platelets.

An attempted onsite inspection by FDA on May 23, 1995, revealed that the facility was no longer in operation at the location listed on the license. An FDA investigator, from the Nashville District Office, was permitted to visit the unoccupied facility on August 3, 1995. The investigator documented that the office space and two walk-in freezers were empty and there was no electrical or water service at the facility. Based on the inability of authorized FDA employees to conduct a meaningful inspection of the facility, FDA initiated proceedings for the revocation of the licenses under 21 CFR 601.5(b)(1) and (b)(2). The U.S. Postal Service supplied FDA with the firm's forwarding address, and FDA sent a certified letter, dated September 8, 1995, to the firm's responsible head providing notice of FDA's intent to revoke the licenses and its intent to offer an opportunity for a hearing on the proposed revocation. The responsible head responded by telephone on September 12, 1995, and said that she was no longer employed by Personal Blood Storage of Memphis, Inc. She also sent a copy of a March 3, 1995, letter to the Center for Biologics Evaluation and Research (CBER), in which she stated that she was no longer the technical director or responsible head for Personal Blood Storage of Memphis, Inc. A copy of FDA's letter of intent to revoke U.S. License No. 1131 was also sent to one owner's address in Texas and this letter was returned by the U.S. Postal Service as unclaimed.

Under § 12.21(b) (21 CFR 12.21(b)), FDA published in the **Federal Register** of April 24, 1996 (61 FR 18149), a notice of opportunity for a hearing on a proposal to revoke the licenses of Personal Blood Storage of Memphis, Inc. In the notice, FDA explained that the proposed license revocation was based on the inability of authorized FDA employees to conduct a meaningful inspection of the facility because it was no longer in operation and noted that documentation in support of the license revocation had been placed on file for public examination with the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. The notice provided the firm 30 days to submit a written request for a hearing and 60 days to submit any data and information justifying a hearing. The notice provided other interested persons with 60 days to submit written comments on the proposed revocation. The firm did not respond within the 30-day time period with a written request for a hearing. Under § 12.21(b), the 30-day time period, prescribed in the notice of opportunity for a hearing and in the regulations, may not be extended. No other interested persons submitted written comments on the proposed revocation within the 60-day time period.

Accordingly, under 21 CFR 12.38(a)(1), section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, CBER (21 CFR 5.67), the establishment license (U.S. License No. 1131), and the product licenses issued to Personal Blood Storage of Memphis, Inc., are revoked, effective August 5, 1997.

This notice is issued and published under 21 CFR 601.8.

Dated: July 28, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–20494 Filed 8-4-97; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institutes of Allergy and Infectious Diseases; Notice of Closed Meeting

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 National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

*Name of SEP:* To evaluate research grant R03 AI41597–01 (Telephone Conference Call).

*Date:* August 11, 1997.

*Time:* 1:00 p.m. to Adjournment.

*Place:* Teleconference, 6003 Executive Boulevard, Solar Bldg., Room 4C01, Bethesda, MD 20892, (301) 496–2550.

*Contact Person:* Dr. Kevin Callahan, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C20, Bethesda, Md 20892, (301) 496–8424.

*Purpose/Agenda:* To evaluate a grant application.

This meeting will be closed in accordance with the provisions set forth in sections 552(b)(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 period to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: July 29, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–20551 Filed 8–4–97; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

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 National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Outgoing of Perinatal Host Defenses.

*Date:* August 7–8, 1997.

*Time:* August 7—7:00 p.m.–10:00 p.m., August 8—8:00 a.m.–adjournment.

*Place:* Betheda Marriott, 5151 Pooks Hill Road Bethesda, Maryland 20814.

*Contact Person:* Edgar Hanna, Ph.D., Scientific Review Administrator, DSR, 6100 Executive Boulevard, Room 5E01, Bethesda, Maryland 20892, Telephone: 301–496–1485.

*Purpose/Agenda:* To evaluate and review research grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552(b)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

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 review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Muscloskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: July 30, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–20552 Filed 8–4–97; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Small Grant Review (Teleconference).

*Date:* August 12, 1997.

*Time:* 2:00 p.m.–adjournment.

*Place:* 6100 Executive Boulevard, 6100 Building—Room 5E01, Bethesda, Maryland 20892.

*Contact Person:* Gopal M. Bhatnagar, Ph.D., Scientific Review Administrator, 6100 Executive Boulevard, 6100 Building—Room 5E01, Bethesda, Maryland 20892, Telephone: 301–496–1696.

*Purpose/Agenda:* To evaluate and review a grant application.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussions of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [No. 93.865, Research Mothers and Children], National Institutes of Health)

Dated: July 30, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–20553 Filed 8–4–97; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

**SUPPLEMENTARY INFORMATION:**

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance

testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratory, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7875, (formerly: Bayshore Clinical Laboratory)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–549–8263 / 800–833–3984, (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093, (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700 / 800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784 / 915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 / 800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–392–7961

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/ 800–526–6339

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244 / 612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835 / 309–671–5199

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512)

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400 / 800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200 / 800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070 / 800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600 / 800–882–7272

Premier Analytical Laboratories, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784 / 800–888–4063 (formerly: Drug Labs of Texas)

Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947 / 972–916–3376 (formerly: Damon Clinical Laboratories, Damon/ MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474 / 412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/ Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191,

630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 / 314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728 / 619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800 / 800–999-LABS
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379 / 800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–0289 / 610–631–4600 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 / 800–966–2211 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The Standards Council of Canada (SCC) Laboratory Accreditation Program for Substances of Abuse (LAPSA) has been given deemed status by the Department of Transportation. The SCC has accredited the following Canadian laboratory for the conduct of forensic urine drug testing required by Department of Transportation regulations: MAXXAM Analytics Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.).

**Richard Kopanda,**

*Executive Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 97–20499 Filed 8–4–97; 8:45 am]

BILLING CODE 4160–20–U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the SAMHSA Center for Substance Abuse Prevention in September 1997.

The two-day scientific meeting will be to continue discussing alternative specimens and technologies of drug testing (i.e., hair, saliva, sweat, and non-instrument based-on-site tests) as they apply to workplace drug testing programs. The entire meeting is open to the public; however, attendance by the public will be limited to space available. Therefore, it would be helpful if those planning to attend would pre-register by following Registration instructions below. There will be a limited time for public comment during the meeting. If anyone needs special accommodations for persons with disabilities please notify the Contact listed below. Any individual desiring to make a formal comment should notify the Contact person listed below before August 29.

The purpose of the meeting is: (1) To review the proposed principles and criteria associated with a forensic workplace drug testing program that were presented at the April 28–30, 1997, DTAB meeting and determine if those are the appropriate standards that any drug testing program needs to satisfy; (2) to review the information and scientific studies presented or submitted by the representatives of the alternative specimens and technology industries during and/or after the April 28–30 DTAB meeting, to determine their strengths and weaknesses, what criteria they satisfy, and what areas may need improvement; and (3) to make recommendations to assist these alternative specimens and technologies to satisfy the criteria.

An agenda for this meeting and a roster of board members may be obtained from: Ms. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–6014.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

*Committee Name:* Drug Testing Advisory Board.

*Meeting Date:* September 9–10, 1997.

*Place:* Sheraton National Hotel, Columbia Pike & Washington Blvd, Arlington, Virginia 22204, Phone: (800) 468–9090.

*Open:* September 9, 1997, 8:30 a.m.–5:00 p.m., September 10, 1997, 8:30 a.m.–4:00 p.m.

*Registration:* Pre-register by calling: (301) 443–6014 or by FAX: (301) 443–3031 for individuals planning to attend: full name, organization and telephone number or sign in upon arrival; there is no registration fee.

*Contact:* Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443–6014 and FAX: (301) 443–3031.

Dated: July 30, 1997.

**Jeri Lipov,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 97–20555 Filed 8–4–97; 8:45 am]

**BILLING CODE 4162–20–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–921–4210–05; WYW 138920]**

### Opening of National Forest System Land; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice terminates the temporary segregative effect as to 214.04 acres of National Forest System lands which were originally included in an application for exchange in the Medicine Bow National Forest.

**EFFECTIVE DATE:** August 5, 1997.

**FOR FURTHER INFORMATION CONTACT:** Janet Booth, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

**SUPPLEMENTARY INFORMATION:** Pursuant to the regulations contained in 43 CFR 2091.3–2(b), at 9 a.m. on August 5, 1997, the following described lands will be relieved of the temporary segregative effect of exchange application WYW 138920. The remaining lands in the application for exchange will continue to be processed as requested.

**Sixth Principal Meridian, Wyoming**

T. 13 N., R. 86 W.,
Sec. 20, lots 4, 5, 9;
Tract 42A, 42C;
Sec. 29, lots 1 to 4;
Tracts 39I, 39J, 39K, 39L.

The area described contains 214.04 acres in Carbon County.

At 9 a.m. on August 5, 1997, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988) shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: July 29, 1997.

**Alan L. Kesterke,**

*Associate State Director.*

[FR Doc. 97–20541 Filed 8–4–97; 8:45 am]

**BILLING CODE 4310–22–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–020–5410–A142; AZA 29933]**

### Notice of Segregation

**SUMMARY:** An application for the conveyance of federally-owned minerals has been filed for the following described land, under the provisions of 43 U.S.C. 1719:

**Gila and Salt River Meridian, Arizona**

T. 6 N., R. 4 E.,
Sec. 10, W½NW¼NE¼.

Containing 20 acres.

Upon publication in the **Federal Register**, the mineral interests owned by the United States in the land described above, will be segregated from appropriation under the public land laws, including the mining laws. The segregation will terminate upon issuance of a patent for the mineral interests, rejection of the application, or 2 years from the date of publication, whichever comes first.

**FOR FURTHER INFORMATION CONTACT:** Laura Wood, (602) 417–9360.

Dated: July 24, 1997.

**Mary Hyde,**

*Acting Supervisor, Lands and Minerals Operations.*

[FR Doc. 97–20511 Filed 8–4–97; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 26,1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by August 20, 1997.

**Carol D. Shull,**

*Keeper of the National Register.*

**ARIZONA**

**Gila County**

Pine Historic District, Roughly bounded by Bradshaw , Brown, Blackburn, Pine Creek Canyon Drs., Pine Cr., and Camp Lo-Mia, Pine, 97000909

**CALIFORNIA**

**San Diego County,**

San Diego State College, 5300 Campanile Dr., San Diego, 97000924

**FLORIDA**

**Pasco County**

Church Street Historic District, Along Church St., between 9th and 17th Sts., Dade City, 97000910

**GEORGIA**

**Muscogee County**

Southern Railway Freight Depot, 1300 6th Ave., Columbus, 97000922

**Wheeler County**

Glenwood High School, 505 3rd Ave., Glenwood, 97000923

**MAINE**

**Oxford County**

Maine Archaeological Survey site 21.26, (Native American Petroglyphs and Pictographs of Maine MPS) Address restricted, Lovell vicinity, 97000915

**Washington County**

Birch Point, (Native American Petroglyphs and Pictographs of Maine MPS) Address restricted, Machiasport vicinity, 97000913

Grand Lake Stream Site, (Native American Petroglyphs and Pictographs of Maine MPS) Address restricted, Grand Lake Stream vicinity, 97000916

Hog Island—62.23, (Native American Petroglyphs and Pictographs of Maine MPS) Address restricted, Machiasport vicinity, 97000911

Hog Island—62.24, (Native American Petroglyphs and Pictographs of Maine MPS) Address restricted, Machiasport vicinity, 97000917

Hog Island—62.25, (Native American Petroglyphs and Pictographs of Maine MPS) Address restricted, Machiasport vicinity, 97000918

Hog Island—62.29, (Native American Petroglyphs and Pictographs of Maine MPS) Address restricted, Machiasport vicinity, 97000912

Holmes Point, (Native American Petroglyphs and Pictographs of Maine MPS) Address restricted, Machiasport vicinity, 97000914

**MARYLAND**

**Carroll County**

New Windsor Historic District, Roughly bounded by Park, and Springdale Aves., New Windsor Rd., Lambert Ave., Coe Dr., and Maine St., New Windsor, 97000925

**Kent County**

Lauretum, 954 High St, Chestertown vicinity, 97000926

**MASSACHUSETTS**

**Suffolk County**

Brighton Evangelical Congregational Church, 404–410 Washington St., Boston, 97000920

Worcester County, Clapp, George, House, 44 North St., Grafton, 97000919

**MICHIGAN**

**Leelanau County**

Leelanau Transit Company Suttons Bay Depot, 101 S. Cedar St., Suttons Bay, 97000929

**Oakland County**

Fuerst, Jacob and Rebecca, Farmstead, 24000 Taft Rd., Novi, 97000928

**Wayne County**

Lancaster and Waumbek Apartments, 227–29 and 237–39 E. Palmer, Detroit, 97000921

**MISSISSIPPI**

**Forrest County**

Building 1071, Jct. of Jackson Ave., and Jackson Ave. W, Camp Shelly, 97000930

**N. MARIANA ISLANDS**

**Saipan Municipality**

As Taga, Address restricted, San Jose Village vicinity, 97000931

**NEW JERSEY**

**Bergen County**

Rose, James, House, 506 E. Ridgewood Ave., Ridgewood Borough, 97000936

**Camden County**

Woodlynne Log Cabin, 200 Blk. of Cooper Ave., Woodlynne, 97000933

**Cape May County**

Hangar No. 1—United States Naval Air Station Wildwood, Jct. of Forrestal and Langley Rds., Lower Township, 97000935

**Gloucester County**

Carpenter Street School, 53–5 Carpenter St., Woodbury, 97000934

**Mercer County**

Roebling Machine Shop, 675 S. Clinton Ave., Trenton, 97000932

**NEW YORK**

**Columbia County**

Felpel, George, House, (Claverack MPS) 60 NY 9H, Claverack, 97000927

Hogeboom, Stephen, House, (Claverack MPS) 562 NY 23B, Claverack, 97000944

Ludlow—Van Rensselaer House, (Claverack MPS) 465 NY 23B, Claverack, 97000945

Mesick, Jacob P., House (Claverack MPS) 68 Van Wyck Ln., Claverack, 97000947

Phillips, Harriet, Bungalow, (Claverack MPS) 438 NY 23B, Claverack, 97000946

Porter, Rev. Dr. Elbert S., House, (Claverack MPS) 6163 NY 9H, Claverack, 97000949

Trinity Episcopal Church, (Claverack MPS) 601 NY 23B, Claverack, 97000948

**Herkimer County**

Church of the Good Shepherd, NY 167, jct. of NY 167 and Earl St., Cullen vicinity, 97000943

Remington House, 1279 Upper Barringer Rd., Kinne Corners vicinity, 97000942

**Jefferson County**

La Farge Retainer Houses, (Orleans MPS), Main St., S of jct. of Main St. and Ford Rd., Orleans, 97000941

**Oneida County**

Zion Church, (Historic Churches of the Episcopal Diocese of Central New York MPS), 140 W. Liberty St., Rome, 97000950

**Orange County**

Dubois—Phelps House, 90 Walkill Rd., Montgomery, 97000939

Huguenot Schoolhouse, Old Grange Rd., S of jct. of Old Grange and Big Pond Rds., Deerpark, 97000938

Tears, John, Inn, 1224 Goshen Tnpk., Wallkill, 97000940

**Oswego County**

Kingsford House, 150 W. Third St., Oswego, 97000951

**Otsego County**

Cooperstown Historic District (Boundary Increase), Lake Rd., 1 mi. N of jct. of NY 80 and NY 28, Cooperstown vicinity, 97000937

**OHIO**

**Champaign County**

St. Paul AME Church, 316 E. Market St., Urbana, 97000954

**RHODE ISLAND**

**Washington County**

Browning's Beach Historic District, Browning's Beach, 0.5 mi. W of jct. Card Pond and Matunuck Beach Rds., South Kingstown, 97000952

**TENNESSEE**

**Knox County**

Bishop, Alexander, House, (Knoxville and Knox County MPS), Address restricted, Knoxville vicinity, 97000953

**VIRGINIA**

**Norfolk Independent City**

Epworth United Methodist Church, 124 W. Freemason St., Norfolk, 97000955

**Prince George County**

Upper Brandon Plantation, 2300 Upper Brandon Rd., Spring Grove vicinity, 97000959

**Rockbridge County**

Fancy Hill, Jct. of US 11 and VA 680, Glasgow vicinity, 97000957

**Portsmouth Independent City**

Confederate Monument, Jct. of High and Court Sts., Portsmouth, 97000956

**Richmond Independent City**

Church Hill North Historic District—VDHR 127–820, Along Marshall, Clay Leigh and M. Sts., bounded by 21st and 30th Sts., Richmond, 97000958

[FR Doc. 97–20538 Filed 8–4–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### Trinity River Basin Fish and Wildlife Task Force

**AGENCY:** Bureau of Reclamation (Reclamation), Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of a meeting of the Trinity River Basin Fish and Wildlife Task Force.

**DATES:** The meeting will be held on Tuesday, September 30, 1997, at 1:00 p.m.

**ADDRESSES:** The meeting will be at the Woodly Island Marina off of Highway 255 in Eureka, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chip Bruss, Trinity River Task Force Secretary, Bureau of Reclamation, MP–153, 2800 Cottage Way, Sacramento CA 95825. Telephone: (916) 979–2473.

**SUPPLEMENTARY INFORMATION:** Task Force members will be briefed on the Trinity River Mainstem Fishery Restoration Environmental Impact Statement and the U.S. Fish and Wildlife Service Trinity River Flow Study Report. The Task Force will also consider the Fiscal Year 1998 budget.

The meeting of the Task Force is open to the public. Any member of the public may file a written statement with the Task Force in person or by mail before, during, or after the meeting. To the extent that time permits, the Task Force Chairman may allow public presentation of oral statements at the meeting.

Dated: July 16, 1997.

**Roger K. Patterson,**

*Regional Director.*

[FR Doc. 97–20549 Filed 8–4–97; 8:45 am]

BILLING CODE 4310–09–P

## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review; Official Seal

**AGENCY:** Executive Office for Immigration Review.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Executive Office for Immigration Review has adopted and hereby prescribes its official seal.

**EFFECTIVE DATE:** This notice is effective August 5, 1997.

**FOR FURTHER INFORMATION CONTACT:** Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, (703) 305–0470.

**SUPPLEMENTARY INFORMATION:** The central device of the official seal of the Executive Office for Immigration Review is that of the Department of Justice, encircled by a bond inscribed with the organization's designation. More specifically, on a Buff disc, a shield blazoned: Paleways of thirteen pieces Argent and Gules, a chief Azure, an eagle rising and standing on the middle of the shield holding in his dexter talon an olive branch consisting of thirteen leaves and berries and in his sinister talon thirteen arrows, all Proper. In an arc below the device the inscription, ''Qui Pro Domina Justitia Sequitur,'' all encircled by a Blue band edged and inscribed with ''DEPARTMENT OF JUSTICE'' and ''EXECUTIVE OFFICE FOR IMMIGRATION REVIEW'' below in gold and enclosed by a Gold rope. The design is illustrated as follows:

BILLING CODE 4410–30–M


BILLING CODE 4410–30–C

The use of the seal or replica is restricted to the following:

(1) Executive Office for Immigration Review documents, including all documents issued by Executive Office for Immigration Review components that are required to be issued under Seal;

(2) Plaques for display at Executive Office for Immigration Review facilities such as Immigration courts, Executive Office for Immigration Review offices, and other places designated by the Director, Executive Office for Immigration Review;

(3) Official films prepared by or for the Executive Office for Immigration Review;

(4) Official Executive Office for Immigration Review publications; and

(5) Any other uses as the Director of Executive Office for Immigration Review finds appropriate.

Dated: July 22, 1997.

**Anthony C. Moscato,**

*Director, Executive Office for Immigration Review.*

[FR Doc. 97–20409 Filed 8–4–97; 8:45 am]

BILLING CODE 4410–30–M

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### National Institute of Justice

**[OJP(NIJ)–1140]**

**RIN 1121–ZA86**

### National Institute of Justice Solicitation for Information Technology Acquisition: Local and State Law Enforcement

**AGENCY:** Office of Justice Programs, National Institute of Justice, Justice.

**ACTION:** Notice of Solicitation.

**SUMMARY:** Announcement of the availability of the National Institute of Justice solicitation ''Information Technology Acquisition: Local and State Law Enforcement.''

**DATES:** The deadline for receipt of proposals is close of business September 5, 1997.

**ADDRESSES:** National Institute of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the solicitation, please call NCJRS at 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center at 1–800–421–6770.

**SUPPLEMENTARY INFORMATION:**

#### Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

#### Background

The National Institute of Justice is seeking research applications in the areas of law enforcement information technology selection, implementation, and impact evaluation. In an environment of rapidly changing technology, growing numbers of vendors targeting police agencies as customers, and differing levels of sophistication among agencies, the policing community is in increasing need of researched guidelines to direct their purchase and implementation of new information technologies. Examples of information technology include: management information systems (MIS), computer-aided dispatch (CAD), electronic pin mapping, geo-mapping, and other information technologies appropriate to police functions.

There are three phases to the acquisition and adoption of information technology to be considered in each proposal: the assessment and decisionmaking phase, where the study will look to identify agency need and technologies that fit that need, and consider budget constraints; the implementation phase, in which the study should consider the extent of necessary planning, the role of agency staff, and the possible involvement of external agencies or constituency; and the impact-assessment phase, where the study will determine the levels of change driven by the new technologies within the police agency, and the impact of the technology on efficiency, methodology, and effectiveness.

Applicants should include within their research design a combination of the following research procedures: focus groups, case studies, a comprehensive study based on the focus groups and case studies, and model development.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Information Technology Acquisition: Local and State Law Enforcement'' (refer to document no. SL000233). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via the Internet. Telnet to ncjrsbbs.ncjrs.org, or gopher to ncjrs.org:71. For World Wide Web access, connect to the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set the modem at 9600 baud, 8–N–1.

**Jeremy Travis,**

*Director, National Institute of Justice.*

[FR Doc. 97–20589 Filed 8–4–97; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Washington State Standards; Notice of Approval

#### 1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on at least as effective as status of the State program, a program change supplement to a State plan shall be required.

On its own initiative, the State submitted by letter dated April 2, 1993, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, amendment of the State Agriculture Standard 296–306-WAC comparable to the Federal Standard 29 CFR 1928. The State-initiated amendment incorporates new sections to the State Agriculture standard including: WAC 296–306–061, machinery and machine guarding, and WAC 296–306–330, decontamination. (Several new pesticides sections were

also added, but these are outside the scope of the State plan.) In addition, the amendment contains several regulatory and administrative changes to the State Agriculture standard. The State adopted the amendment by Administrative Order (AO) 92–24 on March 4, 1993, effective June 1, 1993. Regional Office review revealed discrepancies and the submission was returned to the State for correction. In a letter dated July 24, 1995, from Mark O. Brown, Director, to Richard S. Terrill, Acting Regional Administrator, the State re-submitted its entire Agriculture Standard 296–306-WAC after making corrections. The State-initiated amendment also included minor changes to supplementary requirements for materials handling and storage, guarding of power tools, hazardous materials, aerial manlift equipment and the application of WAC 296–24–233, motor vehicle trucks and trailers in the State Agriculture rules. The State adopted the amendment by AO 94–21 on May 1, 1995 with an effective date of January 16, 1996. In a letter of November 9, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, the State submitted State-initiated amendments to the State Agriculture Standard incorporating new and amended sections addressing machine guarding and electrical requirements. The amendments were adopted by AO 94-01 on September 1, 1994, effective September 1, 1994.

On its own initiative, the State submitted by letters dated February 23, 1988 and December 7, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and April 2, 1993 and April 8, 1994, from Mark O. Brown, Director, to James W. Lake, Regional Administrator, amendments to the State Agriculture standards concerning supplementary requirements for Rollover Protective Structures (ROPS) for materials handling equipment, WAC 296–306–260, which incorporates WAC 296–306–27095 Exhibit B, Figure C–17 through C–34. These amendments were adopted by the State in AO 87–24 on November 30, 1987, effective December 30, 1987; in AO 91–01 on May 20, 1991 effective June 20, 1991; in AO 92–24 on March 4, 1993 effective June 1, 1993; and in AO 93–17 on March 2, 1994, effective April 15, 1994. The State Agriculture standards supplementary requirements for ROPS for materials handling equipment parallel OSHA's ROPS requirements in 29 CFR Part 1926, Safety and Health Regulations for Construction.

On its own initiative, the State submitted by letter dated April 8, 1994 from Mark O. Brown, Director, to James W. Lake, Regional Administrator, amendment to the State Agriculture standard 296–306-WAC. The State-initiated amendment removes an exemption for the Agriculture industry from the following State standards and makes these sections applicable in Agriculture: WAC 296–24–11001, control of hazardous energy (Lockout/Tagout; WAC 296–24–12001, sanitation; WAC 296–24–14011, accident prevention tags; WAC 296–24-33003, flammable and combustible liquids; WAC 296–24–58503, fire protection; and WAC 296–24–73501, walking-working surfaces. In addition, the State-initiated amendment contains several regulatory and administrative changes to the State Agriculture standards. The State adopted the amendment by AO 93–17 on March 2, 1994, effective March 1, 1995.

On its own initiative, the State submitted by letter dated November 20, 1995 from Mark O. Brown, Director, to Richard S. Terrill, Acting Regional Administrator, an amendment to the State Agriculture standard 296–306-WAC. The State-initiated amendment removes the March 1, 1995 application date and reinstates the exemption for the State's Agriculture standard from WAC 296–24-33003, flammable and combustible liquids; WAC 296–24–58503, fire protection; and WAC 296–24–73501, walking-working surfaces. The State-initiated amendment also removes the March 1, 1995 application date from WAC 296–24–14011, accident prevention tags. In addition, the amendment removes the March 1, 1995 effective date from WAC 296–24–12001, sanitation, and includes an agriculture exemption for the shower requirements of WAC 296–24–12009(3). The State adopted the amendment by AO 94–19 on October 20, 1995, effective January 16, 1996.

All of the administrative orders were adopted pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08. All these amendments have been incorporated as part of the State plan. The original State standard, Safety Standards for Agriculture, received approval on Tuesday, August 9, 1977 (42 FR 40278).

**2. Decision**

OSHA has determined that the State standard amendments for Agriculture are at-least-as-effective-as the comparable Federal standard, as required by Section 18(c)(2) of the Act. For the Agriculture amendments adopted by Administrative Orders 94–19 and 94–21, OSHA has also determined that the differences between the State and Federal standards are minimal and that the standards are thus substantially identical. The other Agriculture amendments have been in effect since at least March 1, 1995. During this time OSHA has received no indication of significant objection to the State's different standard either as to its effectiveness in comparison to the Federal standard or as to its conformance with the product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA therefore approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

**3. Location of Supplement for Inspection and Copying**

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; State of Washington Department of Labor and Industries, Division of Industrial Safety and Health, 7273 Linderson Way, S.W., Tumwater, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue, NW, Washington, D.C. 20210. For electronic copies of this **Federal Register** notice, contact OSHA's WebPage at http://www.osha.gov/.

**4. Public Participation**

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard amendments are at-least-as-effective-as the Federal standard which was promulgated in accordance with the Federal law including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the

procedural requirements of State law and further public participation would be repetitious.

This decision is effective August 5, 1997. (Sec. 18, Pub. L. 91–596, 84 STAT. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington, this 15th day of May, 1997.

**Richard S. Terrill,**

*Acting Regional Administrator.*

[FR Doc. 97–20550 Filed 8–4–97; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used in all NARA research rooms and museums for customers to provide comments, suggestions, and complaints about NARA service. The information will be used to improve service and plan future services. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before October 6, 1997.

**ADDRESSES:** Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Customer Comment Form.

*OMB number:* 3095–0007.

*Agency form number:* NA Form 14045.

*Type of review:* Regular.

*Affected public:* Individuals.

*Estimated number of respondents:* 1,925.

*Estimated time per response:* 5 minutes.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 160 hours.

*Abstract:* The information collection is a customer comment form made available to persons who use NARA services or visit NARA museums. The form is voluntary and is used to record comments, complaints, and suggestions from NARA customers. NARA uses the information to correct problems and improve service.

Dated: July 29, 1997.

**L. Reynolds Cahoon,**

*Assistant Archivist for Human Resources and Information Services.*

[FR Doc. 97–20513 Filed 8–4–97; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Submission for OMB Review; Comment Request

July 31, 1997.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (IRC) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Director of Guidelines and Panel Operations, A.B. Spelling (202) 682–5788.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

*Agency:* National Endowment for the Arts.

*Title:* The National Endowment for the Arts Panelist Profile Form.

*OMB Number:* 3135–0098.

*Frequency:* Renew every three years as required.

*Affected Public:* Individuals.

*Number of Respondents:* 1378.

*Estimated Time Per Respondent:* 10 minutes.

*Total Burden Hours:* 234 hours.

*Total Annualized Capital/Startup:* 0.

*Total Annual Costs (Operating/Maintaining Systems or Purchasing Services):* 0.

*Description:* The National Endowment for the Arts Panelist Profile Form is used to collect basic information from qualified individuals who have been recommended for panel service. The collected information is entered into a computerized database which serves as a reference for Endowment staff to aid in assembling advisory panels which meet Congressional requirements for broad representation.

**Murray Welsh,**

*Director, Administrative Services.*

[FR Doc. 97–20596 Filed 8–4–97; 8:45 am]

**BILLING CODE 7537–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 040–8724, License No. SUB–1357 EA 93–271]**

### In the Matter of Chemetron Corporation, Delray, Florida; Order Imposing Civil Monetary Penalty

**I**

Chemetron Corporation (Licensee) is the holder of License No. SUB–1357 issued by the Nuclear Regulatory Commission (NRC or Commission) on June 12, 1979. The license authorizes the Licensee to possess depleted uranium-contaminated wastes at its facility located at 2910 Harvard Avenue in Cuyahoga Heights, Ohio, and at the McGean-Rohco property located between 28th and 29th Streets at Bert Avenue, Newburgh Heights, Ohio, in accordance with the conditions specified therein.

**II**

A review of the remediation plan submitted by the Licensee on October 1, 1993, revealed that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (notice) was served upon the Licensee by letter dated May 11, 1994. The Notice states the nature of the violation, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the notice in letters dated June 9 and September 9, 1994. In its responses, the Licensee restated the events concerning the violation, including the fact that three sections of the remediation plan were not submitted by the required date, asserted errors in the Notice, and set out what it considered extenuating circumstances.

**III**

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

**IV**

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby orderd that:*

The Licensee pay a civil penalty in the amount of $10,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

**V**

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Rd., Lisle, Illinois 60532–4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland this 28th day of July 1997.

For the Nuclear Regulatory Commission.

**James Lieberman,**

*Director, Office of Enforcement.*

[FR Doc. 97–20547 Filed 8–4–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–266 and 50–301]**

### Wisconsin Electric Power Company; Point Beach Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR–24 and DPR–27, issued to Wisconsin Electric Power Company (the licensee), for operation of the Point Beach Nuclear Plant, Units 1 and 2, located in Manitowoc County, Wisconsin.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would revise (1) Section 3.A of Facility Operating Licenses DPR–24 and DPR–27 from a licensed power level of 1518 megawatts thermal (MWt) to 1518.5 MWt; (2) technical specification (TS) 15.3.1.B Bases power level from 1518 MWt to 1518.5 MWt; and (3) TS 15.3.1.B Bases reference 2 from revision 2 to revision 3. These changes make the value of the licensed power level listed in Section 3.A of the licenses and in the Units 1 and 2 bases of TS 15.3.1.B consistent with the value listed in the balance of the TS and in the final safety analysis report (FSAR). The changes are administrative and do not change plant design or operation.

The proposed action is in accordance with the licensee's application for amendment dated August 22, 1996, as supplemented by letter dated July 14, 1997.

*The Need for the Proposed Action*

The proposed action would revise the power level included in Facility Operating Licenses DPR–24 and DPR–27 to restore consistency with the authorized power level defined in the TS and assumed in performing facility safety analyses.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed changes to the licenses and TS. According to the licensee, the administrative change in the licensed power level restores consistency between the licenses and the TS. The TS, as originally issued, defined the licensed power level as 1518.5 MWt. At no time has the power level defined in the TS been changed from 1518.5 MWt. Accident analyses performed in support of original

licensing used as a bases for analyses the value of 1518.5 MWt or an appropriate multiple of 1518.5, as required. Only one current analysis, fluence values affecting 10 CFR part 50, Appendix G, specifically referenced a power level of 1518 MWt. The licensee concluded that the results of this analysis are insensitive to the change in power level and sufficient assurance regarding the effect of fluence levels is obtained in analyzing material specimens.

This administrative 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 is administrative in nature and does not involve any physical features of the plant. Thus, it 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.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Point Beach Nuclear Plant, Units 1 and 2.

*Agencies and Persons Consulted*

In accordance with its stated policy, on July 17, 1997, the staff consulted with the Wisconsin State official, Sarah Jenkins of the Wisconsin Public Service Commission, 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 letter dated August 22, 1996, as supplemented on July 14, 1997, which is 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 Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Dated at Rockville, Maryland, this 28th day of July 1997.

For The Nuclear Regulatory Commission.

**Linda L. Gundrum,**

*Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–20545 Filed 8–4–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–309]**

## Maine Yankee Atomic Power Company; Maine Yankee Atomic Power Station; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition for action under 10 CFR 2.206 received from Mr. Patrick M. Sears (Petitioner), dated August 19, 1996, and revised on April 14, 1997, with regard to the Maine Yankee Atomic Power Station.

The Petitioner requested the NRC to (1) fine Maine Yankee Atomic Power Company (MYAPCO) and Yankee Atomic Electric Company (YAEC) if records regarding use of the computer code RELAP have not been kept in accordance with YAEC's computer code quality assurance procedures and (2) inspect all users of RELAP and fine those users not operating within required computer code verification procedures.

The Director of the Office of Nuclear Reactor Regulation has acknowledged parts (1) and (2) of the Petition. The reasons for this decision are explained in the ''Director's Decision Pursuant to 10 CFR 2.206'' (DD–97–17), the complete text of which follows this notice and is 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 for the Maine Yankee Atomic Power Station located at the Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided by this regulation, this Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 30th day of July 1997.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

**Director's Decision Under 10 CFR 2.206**

*I. Introduction*

On August 19, 1996, Patrick M. Sears (Petitioner) filed a Petition with the U.S. Nuclear Regulatory Commission (NRC) pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). Petitioner requested the NRC to (1) Fine Maine Yankee Atomic Power Company (MYAPCO) and Yankee Atomic Electric Company (YAEC) if records regarding use of the computer code RELAP5YA have not been kept in accordance with YAEC's computer code quality assurance (QA) procedures, and (2) inspect all users of RELAP and fine those users not operating within required computer code verification procedures.

As the basis for these requests, the Petition states that (1) The May 5, 1989, oral statement of Steve Nichols, then licensing supervisor of MYAPCO, to Petitioner, then NRC Project Manager for Maine Yankee Atomic Power Station (MYAPS), that RELAP5YA was ''operable'' and would be used for subsequent reloads was false; (2) no computer code inspections were performed by NRC before a 1992 inspection at YAEC by Mr. Sears, and not again until 1995; (3) when Mr. Sears was in the Vendor Inspection Branch, he was told not to do any more computer code inspections; (4) RELAP is widely used; (5) RELAP has been shown to have serious deficiencies; and (6) the RELAP problem is not confined to the MYAPS but is endemic to the industry as a whole.

On September 24, 1996, Mr. William T. Russell, then Director of the Office of

Nuclear Reactor Regulation, acknowledged receipt of the Petition. By letter dated April 14, 1997, Petitioner supplemented his Petition by correcting his characterization of Mr. Nichols' comment, substituting the word ''operational'' for ''operable''.

*II. Background*

As a result of concerns regarding small-break loss-of-coolant accident (SBLOCA) analyses of emergency core cooling systems (ECCS) raised by the 1979 accident at Three Mile Island Unit 2, and pursuant to 10 CFR 50.54(f), the NRC required licensees to submit revised, documented SBLOCA analyses which were to meet the guidance provided in NRC's ''Clarification of TMI Action Plan Requirements'' (NUREG–0737 or TMI Action Plan), Item II.K.3.30. and II.K.3.31. In response to the guidance of Item II.K.3.30, on January 14, 1983, Maine Yankee submitted a report, YAEC–1300P, ''RELAP5YA: A Computer Program for Light Water Reactor System Thermal-Hydraulic Analysis'' to the NRC. In January 1989, the NRC approved RELAP5YA for use by Maine Yankee as a 10 CFR Part 50, Appendix K, evaluation model, acceptable to demonstrate compliance with the requirements of 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems for light water nuclear power reactors.'' RELAP5YA is a generic, non-plant-specific LOCA computer code for calculating ECCS performance over the small-break portion of the break spectrum.

Item II.K.3.31 of the TMI Action Plan states that licensees are to submit plant-specific calculations using the SBLOCA evaluation model approved by the NRC pursuant to Item II.K.3.30. In response to TMI Action Plan Item II.K.3.31, YAEC prepared for Maine Yankee a plant-specific Appendix K, RELAP5YA SBLOCA evaluation model analysis and prepared a report in June 1993 identified as YAEC–1868: ''Maine Yankee Small Break LOCA Analysis.'' The SBLOCA analysis described in YAEC–1868 was used to prepare Core Performance Analysis Reports (CPARs) which were submitted to the NRC as part of Maine Yankee's reload analyses for Cycle 14 and Cycle 15 operations, and was the SBLOCA analysis of record throughout Cycle 14 operations; it was not used during Cycle 15 operations because of the intervening January 3, 1996, ''Confirmatory Order Suspending Authority for and Limiting Power Operation and Containment Pressure (Effective Immediately), and Demand for Information'' (Order).[1] 61 FR 735 (January 10, 1996).

On December 4, 1995, the NRC received allegations that, among other things, YAEC, acting as agent for the licensee, knowingly performed inadequate analyses of the emergency core cooling system (ECCS) to support two license amendment applications to increase the rated thermal power at which MYAPS operates to 2630 MWt, and then to 2700 MWt. It was further alleged that YAEC management knew that the ECCS for Maine Yankee, if evaluated in accordance with 10 CFR 50.46, using the RELAP5YA SBLOCA evaluation model, did not meet licensing requirements.

In response to the allegations, NRC dispatched an Assessment Team to YAEC headquarters between December 11 and 14, 1995, to examine, among other things, SBLOCA analyses, especially the SBLOCA analysis which supported the licensee's operating Cycle 15 reload application. Based on the Assessment Team review, and a meeting held with the licensee on December 18, 1995, the NRC staff issued its January 3, 1996, Order. The Order concluded, *inter alia*, that the licensee had not demonstrated that computer code RELAP5YA would reliably calculate the peak cladding temperature for all break sizes in the small-break LOCA spectrum for Maine Yankee and that, for a variety of reasons, the plant-specific application of RELAP5YA did not conform to the requirements of 10 CFR 50.46 and thus was not acceptable for use by the licensee. The Order required the licensee to submit a SBLOCA analysis specific to Maine Yankee for operation at power levels up to 2700 MWt, which must meet the requirements of 10 CFR 50.46, and which must conform to the guidance of NUREG–0737, Items II.K.3.30 and 31, ''SBLOCA Methods'' and ''Plant-specific Analysis,'' respectively, and NUREG–0737, Item II.K.3.5, ''Automatic Trip of Reactor Coolant Pumps During LOCA''. The Order suspended authority to operate Maine Yankee at 2700 MWt maximum power and limited power to 2440 MWt, pending NRC review and approval of the required SBLOCA analysis. MYAPCO submitted the required SBLOCA analysis specific to Maine Yankee on April 25, 1996, and the NRC staff is currently reviewing it.

The NRC also initiated an investigation by the NRC Office of Investigations (OI) to examine possible wrongdoing. The NRC staff is currently reviewing the results of that investigation.

*III. DISCUSSION*

A. Do MYAPCo and Other NRC Licensees Who Use RELAP Operate Within Required Computer Code Verification Procedures?

Petitioner requests that the NRC inspect all users of RELAP and fine those users not operating within required computer code verification procedures. The staff presumes that the phrase ''required computer code verification procedures,'' as used by Petitioner, means the conditions, if any, of the NRC's approval of the computer code, as well as the licensee or vendor quality assurance (QA) procedures pursuant to 10 CFR part 50, Appendix B.

There are many vintages of RELAP, which was developed by Idaho National Engineering Laboratory, such as RELAP4, RELAP5/MOD1, RELAP5/MOD2, and RELAP5/MOD3 (higher suffix numbers indicate more current vintages). Major improvements were made in each new vintage, including the use of more sophisticated modeling of two-phase flow. For example, RELAP5/MOD1 has a ''mixture'' model with five governing equations, whereas RELAP5/MOD2 has a full two-fluid treatment with six equations.

Each vintage of RELAP has many versions, representing primarily modifications in supporting models on constitutive relationships and corrections of errors. Idaho National Engineering Laboratory maintains a reporting system for problems discovered by users of the code, which are prioritized and referred to the code development staff for resolution. Therefore, it cannot be assumed that a problem with a particular RELAP vintage or version also exists in other RELAP vintages or versions.

Vendors or licensees who use RELAP codes to support license applications normally take a specific vintage or version of RELAP and create their own variations by making modifications and adding certain features, such as those required by 10 CFR part 50, Appendix K. The RELAP codes used by different vendors and licensees are not necessarily developed from the same versions or vintages of RELAP. For example, the RELAP5YA code used by YAEC for Maine Yankee SBLOCA analysis was derived from RELAP5/MOD1, while most other RELAP codes used for the ECCS analyses of NRC-licensed nuclear plants were derived

[1] Among other things, the Order limited operation of MYAPS to 2440 MWt, pending NRC review and approval of a plant-specific SBLOCA analysis which conforms to TMI Action Plan Items II.K.3.30 and II.K.3.31 and which meets the requirements of 10 CFR 50.46.

from different vintages, namely, RELAP4 or RELAP5/MOD2.

Before a vendor-modified or licensee-modified RELAP code is used for licensing applications, it must be reviewed and approved by the staff. The staff's review and approval will require, among other things, benchmark comparison of the code's predictions against experimental test data. In many cases, the staff's approval of a licensing RELAP code imposes conditions or restrictions for application of the code to ensure that licensing calculations are acceptably conservative, in accordance with the requirements of 10 CFR 50.46 and Appendix K to 10 CFR part 50. The implementation by a licensee or vendor of an approved emergency core cooling system (ECCS) code is controlled by the licensee or vendor's own quality assurance programs in accordance with Appendix B to 10 CFR part 50.

In view of the above, it cannot be presumed that all other vintages of RELAP codes used by the industry have the same deficiencies as those experienced by Maine Yankee with its particular vintage of RELAP, that is RELAP5/MOD1. Two NRC licensees other than Maine Yankee, however, used the RELAP5/MOD1 vintage, that is, Yankee Rowe Nuclear Power Station and Vermont Yankee Nuclear Power Station. Yankee Rowe Nuclear Power Station has been permanently shut down for decommissioning since October 1, 1991. In May 1996, the NRC staff conducted an ECCS code and analysis inspection, and in June 1996, a special inspection of Vermont Yankee. As a result, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty—$50,000 (EA 96–210) on August 23, 1996, for the licensee's failure to assume a specific failure scenario in the LOCA analysis. In that enforcement action, the NRC staff also concluded that Vermont Yankee's corrective actions were prompt and comprehensive. With respect to Maine Yankee, the NRC staff has examined MYAPCO's use of RELAP5YA through the Assessment Team review and the OI investigation. The staff's evaluation of Maine Yankee's use of RELAP5YA is ongoing with regard to any violations of NRC requirements, including 10 CFR 50.46. The staff will keep Petitioner informed by providing Petitioner with copies of publicly available inspection reports and enforcement actions.

Petitioner, nonetheless, correctly points out that the NRC staff should conduct ECCS code and analysis inspections more frequently. In February 1997, the staff's Maine Yankee Lessons Learned Task Group provided its report to the Commission, ''Report of the Maine Yankee Lessons Learned Task Group'' (December 5, 1996), Attachment 1 to SECY–97–042, ''Response to OIG Event Inquiry Regarding Maine Yankee'' (February 18, 1997). The Task Group identified a need to place additional emphasis on (1) audits and inspections of implementation by licensees and vendors of their ECCS codes and methodologies, not limited to the various RELAP codes, and (2) verification of the conformance by licensees and vendors with the conditions specified in the NRC staff's Safety Evaluation Reports as a basis for determining whether codes and methodologies conform with NRC requirements. The Task Group also addressed inspections pursuant to the Core Performance Action Plan, performed to assess the impact of reload core design activities on plant safety. Licensees or vendors found to be in violation of NRC regulations will be subject to enforcement actions.

As explained above, there is no basis to conclude that the problems identified with the RELAP5/MOD1 vintage ECCS code used by Maine Yankee are or may be present in the different RELAP code vintages at other NRC-licensed plants. Additionally, the two other users of the RELAP5/MOD1 code vintage have either been inspected (Vermont Yankee) or are permanently shut down (Yankee Rowe). Nevertheless, the NRC will conduct computer code inspections of selected NRC licensees and vendors, not limited to users of RELAP, as explained above.

In view of the above, Petitioner's request to inspect all users of RELAP and to fine those users not operating within required computer code verification procedures is granted in part, since some users of RELAP will be included in forthcoming computer code inspections and since Maine Yankee and Vermont Yankee have already been inspected.

B. Have MYAPCO and YAEC Kept Records of the Use of the RELAP ECCS Computer Code in Accordance with YAEC's Computer Code Quality Assurance Procedures?

Petitioner requests that the NRC fine MYAPCO and YAEC if records regarding use of the computer code RELAP5YA have not been kept in accordance with YAEC's computer code quality assurance (QA) procedures. The NRC staff's review of the application of RELAP5YA for Maine Yankee between December 11 and 14, 1995, focused on the adequacy of the RELAP5YA SBLOCA analysis to support operation of Maine Yankee during Cycle 15. In particular, the staff evaluated conformance of the code to SER conditions and compliance of the ECCS evaluation model with regulatory requirements. Although the staff's review did not focus on record keeping requirements, the staff did not identify instances in which the appropriate records had not been kept. The staff is continuing its evaluation of RELAP5YA for compliance with other NRC requirements.

Siemens Power Corporation (SPC) has prepared a plant-specific SBLOCA ECCS evaluation model for Maine Yankee, which has been submitted by Maine Yankee in response to the January 3, 1996, Order. The evaluation model is based on SPC's ANF–RELAP SBLOCA methodology, which was originally approved by the NRC in 1989, with further modifications approved by the NRC in 1994. Between February 10, 1997 and April 4, 1997, the staff conducted a four-week QA inspection of SPC. The inspection included a comprehensive review of documentation associated with SPC's LBLOCA and SBLOCA ECCS evaluation models, including the approved ANF-RELAP SBLOCA methodology. The staff's findings associated with ANF-RELAP will be documented in the inspection report, which will be issued by the NRC in the near future. A copy of the inspection report will be provided to Petitioner when it is publicly available. In addition, the NRC staff is currently performing a detailed technical review of the plant-specific ANF-RELAP ECCS evaluation model prepared by SPC for Maine Yankee, and submitted by Maine Yankee. The staff's evaluation of the plant-specific evaluation model will be documented in a Safety Evaluation Report (SER) when completed. The staff concludes that these activities respond directly to the issues raised by Petitioner.

In view of the above, the Petitioner's request for a QA inspection of Maine Yankee's and YAEC's use of RELAP is granted in part, by virtue of the staff's previous and current inspection and review activities. Additionally, the staff will keep Petitioner informed by providing Petitioner with publicly available inspection reports, enforcement actions, and other documents as appropriate.

*IV. Conclusion*

As explained above, Petitioner's request to inspect all users of RELAP and fine those users not operating within required computer code verification procedures is granted in part. Petitioner's request to fine MYAPCO and YAEC if records regarding use of the computer code RELAP have not been kept in

accordance with YAEC's computer code quality assurance procedures is also granted in part.

A copy of this Director's Decision will be filed with the Secretary of the Commission for Commission review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, this Director's Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 30th day of July 1997.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–20546 Filed 8–4–97; 8:45 am]

BILLING CODE 7590–01–P

## POSTAL RATE COMMISSION

**[Docket No. R97–1]**

### Notice of the U.S. Postal Service's Filing of Proposed Postal Rate, Fee, and Classification Changes and Order Instituting Proceedings; Notice of Extension of Deadline for Intervention

Notice is hereby given that in Commission Docket No. R97–1 published at 62 FR 39660, July 23, 1997, the date for intervention as of right under Commission rule 3001.20(c)(39 CFR 3001.20(c)) has been extended from August 6, 1997 to August 13, 1997.

(**Authority:** 39 U.S.C. 404(b), 3603, 3622–24, 3661, 3662)

**Margaret P. Crenshaw,**

*Secretary.*

[FR Doc. 97–20559 Filed 8–4–97; 8:45 am]

BILLING CODE 7710–FW–M

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–54 OMB Control No. 3235–0056]**

### Submission for OMB Review; Comment Request; Revisions; Form 8–A

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20459.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval of revisions to the following form:

Form 8–A is the special form for the registration of additional classes or series of securities by an issuer that is required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (''Exchange Act''). Form 8–A does not require as detailed disclosure about the issuer's business as other Exchange Act registration forms because it presupposes that more detailed information is or will be available through periodic reports pursuant to Sections 13 or 15(d). The form currently contains a disclosure of information concerning the particular class of securities being registered. This information may be provided by incorporation by reference to a comparable description contained in any other filing with the Commission. The Commission believes this information is essential to a determination by an investor of the merits of the security.

The principal function of Commission rules and forms under the securities laws disclosure provisions is to make information available to the securities markets. Private contractors reproduce much of the filed information directly from the Commission's public files. Thus, information in filings on Form 8–A can be, and is, used by security holders, investors, brokers, dealers, investment banking firms, professional securities analysts and others in evaluating securities and making investment and voting decisions with respect to them. In addition, all investors benefit indirectly from filings on Form 8–A, as direct users of the information in such filings effect transactions in securities on the basis of the current information included in such filings, thereby causing the market prices of the securities to reflect such information.

On July 18, 1997, the Commission adopted revisions to Form 8–A. As a result of these revisions, the Commission estimates that 1,940 respondents will file Form 8–A for a total annual burden of 13,050 hours.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 22, 1997.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–20509 Filed 8–4–97; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Notice of Application To Withdraw From Listing and Registration on the Boston Stock Exchange, Inc. Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (B.O.S. Better On-Line Solutions Ltd., Ordinary Shares Par Vale NIS 1.00; Ordinary Share Purchase Warrants) File No. 1–14184

July 30, 1997.

B.O.S. Better On-Line Solutions Ltd. (''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 securities (''Securities'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'') or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Securities are listed on the Nasdaq SmallCap Market and the BSE, pursuant to a Registration Statement on Form F–1 that was declared effective by the Commission on April 2, 1996. The issuer cannot justify the expense of being listed on two exchanges and therefore wishes to withdraw from the BSE.

The Company has notified the BSE of its intent to withdraw its Securities from listing and registration. According to the Company, the BSE has raised no objection to the delistings.

Any interested person may, on or before August 20, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts hearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, it 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. 97–20508 Filed 8–4–97; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Patriot American Hospitality, Inc. and Patriot American Hospitality Operating Company, Common Stock, $.01 Par Value) File No. 1–13898

July 30, 1997.

Patriot American Hospitality, Inc. and Patriot American Hospitality Operating Company (''Company'') have 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 withdrawn the above specified security (''Security'') from listing and registration on the America Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

On July 1, 1997, the Company merged with and into California Jockey Club (''Cal Jockey''). Cal Jockey, the surviving company, changed its name to Patriot American Hospitality, Inc. Prior to the merger, the common stock of Bay Meadows Operating Company (''Bay Meadows'') were paired and traded as a single unit on the Amex.

As a condition of the Merger, the Company agreed to list the paired shares on the New York Stock Exchange (''NYSE''). The post-merger paired shares began trading on the NYSE on July 2, 1997. In determining to withdraw the security from listing, the Company considered the added costs of being listed on both the Amex and the NYSE and the added difficulty of complying with the reporting and other requirements of the two exchanges.

The Company complied with Rule 18 of the Amex by filing with the Amex a certified copy of preambles and resolutions adopted by the respective Boards of Directors prior to the merger, which authorized the withdrawal of the pre-merger paired shares from listing on the Amex and by setting forth in detail to the Amex the reasons for such proposed withdrawal, and the facts in support thereof. By letter dated July 1, 1997, the Amex informed the Company that the Exchange does not intend to object to the Company's filing of an application to withdraw its Security from listing and registration.

Any interested person may, on or before August 20, 1997, 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 exchange 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. 97–20507 Filed 8–4–97; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 4, 1997.

A closed meeting will be held on Thursday, August 7, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, August 7, 1997, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: July 31, 1997.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 97–20613 Filed 7–31–97; 4:16 pm]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–38884; File No. SR–PCX–97–29]**

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Incorporated Relating to the Listing and Trading of Options on the Morgan Stanley Emerging Growth Index

July 29, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 8, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change[3] as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to list for trading index options on the Morgan Stanley Emerging Growth Index (''Index''), a market capitalization-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 23, 1997, PCX submitted an amendment to the proposed rule change (''Amendment No. 1'') that addressed, among other issues, maintenance standards and the Exchange's limitation of liability. See Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX to James T. McHale, Special Counsel, Division of Market Regulation, SEC, dated July 29, 1997.

weighted broad-based index developed by Morgan Stanley & Co. Incorporated (''Morgan Stanley'') comprised of 50 domestic emerging growth securities representing 26 different industry groups.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The PCX is proposing to list and trade cash-settled, European-style stock index options on the Index. The Index is comprised of 50 representative stocks [4] traded on the New York Stock Exchange, Incorporated (''NYSE''), the American Stock Exchange, Incorporated (''Amex'') and through the facilities of the National Association of Securities Dealers, Incorporated (''NASD'') automated quotation system and are reported national market system securities.[5]

The Index was designed by Morgan Stanley to reflect the emerging growth equity market. The component securities were selected for their market capitalization, price per share, long-term debt as a percentage of total capital, mean estimated long-term (three year) earnings per share growth rate, net sales and return on average total equity. Specifically, stocks were selected based on whether they are ''emerging'' stocks (in general, having current sales figures of between $25 million and $2 billion annually) and ''growth'' stocks (in general, having a high mean I/B/E/S anticipated earnings growth rate).[6] A primary consideration in determining ''growth'' is whether a stock's expected growth rate is significantly higher than that of other stocks. In addition, currently all of the issues are traded in the United States and there are no foreign issues or American Depositary Receipts (''ADRs'') included in the Index.[7]

The Exchange represents that the Index currently is representative of the domestic emerging growth stock market as a whole, and therefore, is deemed to be a broad-based index. The Index is comprised of companies in 26 different industry groups, which range from apparel (.76%) to auto parts (.63%) to restaurants (1.79%).[8] Although technology issues comprise 61% of the market capitalization of the index, these companies are included in nine different industries ranging from computer software to semiconductors to computer services.

The Index is weighted by the market capitalization of the component stocks. As of June 18, 1997 the market capitalization of the Index was $112.7 billion. The average market capitalization of these stocks was $2.3 billion on the same date. The individual market capitalization of these stocks ranged from $629 million (Bio Technology General Corp.) to $5.9 billion (BMC Software, Inc.) on that date. The largest stock accounted for 5.20% of the index, while the smallest accounted for 0.56%. The top five stocks in the Index by weight accounted for 24.05% of the Index. The average daily trading volume in the component securities for the period from December 18, 1996 through June 18, 1997, ranged from a low of 94,688 shares to a high of 6,291,777 shares, with an average daily trading volume for all components of the Index of approximately 926,131 shares per day.

The Index will be maintained by PCX in conjunction with Morgan Stanley. Index maintenance includes monitoring Index criteria and completing the adjustments for company additions and deletions, share changes, stock splits, stock dividends and stock price adjustments due to events such as company restructurings or spin-offs, as well as a semi-annual rebalancing and quarterly review.[9] In order to ensure that the Index continues to represent the overall character of the emerging growth equity market, any changes made to the Index, including those made at the time of semi-annual rebalancing and quarterly review, will be in compliance with the following initial inclusion and maintenance criteria: (a) The number of component stocks in the Index will be no less than 42 and no greater than 58; (b) the top weighted component stock will not account for more than 25% of the weight of the Index; (c) the top five weighted component stocks will not

[4] The 50 stocks comprising the Index are: BMC Software Inc. (BMCS), Parametric Technology Corp. (PMTC), Diamond Offshore Drilling, Inc. (DO), Ascend Communications Inc. (ASND), Cabletron Systems (CS), Altera Corp. (ALTR), Ciena Corp. (CIEN), Linear Technology Inc. (LLTC), Paychex Inc. (PAYX), Compuware Corp. (CPWR), XILINX Inc. (XLNX), Maxim Integrated Products (MXIM), Health Management Assoc. (HMA), McAfee Associates Inc. (MCAF), Sterling Commerce Inc. (SE), Iomega Corp. (IOM), Robert Half Intl. Inc. (RHI), ATMEL Corp. (ATML), Bed Bath & Beyond Inc. (BBBY), American Power Conversion (APCC), Planet Hollywood Intl. Inc. (PHII), Synopsys Inc. (SNPS), Reading and Bates Corp. (RB), Viking Office Prods. Inc. (VKNG), Micron Electronics Inc. (MUEI), Cambridge Technology Partners (CAPT), Blyth Industries Inc. (BTH), Jabil Circuit Inc. (JBIL), Novellus Systems Inc. (NVLS), Dollar Tree Stores Inc. (DLTR), Jones Medical Inds. Inc. (JMED), Pairgain Technologies Inc. (PAIR), Rexall Sundown Inc. (RXSD), CDW Computer Centers Inc. (CDWC), Titanium Metals Corp. (TIMT), Remedy Corp. (RMDY), Aspect Telecommunications (ASPT), Delta & Pine Land Co. (DLP), Telco Communications Grp. Inc. (TCGX), APAC Teleservices Inc. (APAC), Learning Tree Intl. Inc. (LTRE), Visio Corp. (VSIO), Catalina Marketing Corp. (POS), Nautica Enterprises Inc. (NAUT), Boston Technology Inc. (BSN), ETEC Systems Inc. (ETEC), Mentor Corp. (MNTR), Gentex Corp. (GNTX), Veritas Software Co. (VRTS), and Bio Technology General Corp. (BTGS).

[5] Attached as Exhibit B to the proposed rule change is a chart analyzing the components of the Index including the market upon which each is traded.

[6] The term I/B/E/S refers to the Institutional Broker's Estimate System, a source of analysts' earnings expectation data that is obtained from over 7,000 analysts working for approximately 750 research organizations.

[7] In the future, should the Index include non-U.S. registered securities, such securities will not in the aggregate comprise more than 10% of the Index weight and will not represent more than 3 Index components. Prior to exceeding these limits, PCX will notify the Commission to determine if a new filing under Rule 19b–4 is required.

[8] The industry groupings and their Index weight are as follows: apparel (0.76%); auto parts (0.63%); biotechnology (0.56%) catalog/specialty distribution (2.55%); computer communications (5.66%); computer local area networks (4.52%); computer software (20.45%); contract drilling (6.29%); discount stores (1.14%); diversified commercial services (8.37%); electronic data processing peripherals (2.55%); electronic data processing services (4.06%); electrical products (1.82%); electronic data processing (1.53%); electronic production equipment (3.18%); farming/seeds/milling (0.86%); hospital/nursing management (2.88%); medical specialties (0.64%); other metals/minerals (0.91%); other pharmaceuticals (2.15%); other specialty stores (1.89%); other telephone/communications (0.84%); packaged goods/cosmetics (1.35%); restaurants (1.79%); semiconductors (16.99%); and telecommunications equipment (5.63%). The industry groupings are based upon the classifications used by FactSet Research Systems, Inc., an electronic market data provider of information that is available by subscription in the securities industry.

[9] Routine corporate actions, such as stock splits and stock dividends that require simple changes in the common shares outstanding and the stock prices of the companies in the Index will be handled by PCX through a contract with Bridge Data. Non-routine corporate actions and other material changes such as share issuances that change the market value of the Index and require an Index divisor adjustment are performed by Morgan Stanley. In addition, Morgan Stanley will select all of the stocks that are added to the Index at the time of semi-annual rebalancing and quarterly review.

account for more than 50% of the weight of the Index; (d) no component stock will have a market capitalization of below $75 million; (e) no component issue will have an average trading volume of less than 20,000 shares per day; (f) no component issue will have an average trading value of less than $100,000 per day; (g) no component will have a price per share of less than $3; (h) at least 80% of the issues comprising the index will meet the initial listing requirements for options trading pursuant to PCX Rule 3.6; and (i) the minimum market capitalization for all of the issues included in the index, collectively, will be $60 billion.

In the event that the Index does not comply with any of these criteria at the time of semi-annual rebalancing and quarterly review, the Exchange first either will make adjustments to the composition of the Index to place it in compliance with such criteria or alternatively will notify Commission staff to determine the appropriate regulatory response, which could include, but is not limited to, the removal of securities from the Index, prohibiting opening transactions, or discontinuing the listing of new series of Index options.

The value of the Index is determined by multiplying the price of each stock by the number of shares outstanding, adding those sums and dividing by a divisor which resulted in an Index value of 300.00 on its base date of February 7, 1997. The Index value will be calculated by Bridge Data Corporation and will be disseminated at 15-second intervals during regular PCX trading hours to market information vendors via the Consolidated Tape Authority. Notice of component changes will be disseminated to vendors and Member Firms via facsimile and over the Options News Network.

The Exchange proposes to base trading in options on the Index on the full value of the Index as expressed in U.S. dollars. The Exchange also may provide for the listing of long-term index option series (''LEAPS'') and for flexible exchange (''FLEX'') options on the Index. The Exchange will list expiration months for Index options and Index LEAPS in accordance with PCX Rule 7.8. Strike prices will be set to bracket the Index in 5 point increments. The minimum tick size for series trading below $3 will be 1/16 and the minimum tick size for all other series will be 1/8.[10]

The Exchange is proposing to establish position limits for Index options equal to 37,500 contracts on the same side of the market, with no more than 22,500 contracts in the series with the nearest expiration date. These limits are roughly equivalent, in dollar terms, to the limits applicable to options on other indices.[11] Furthermore, the hedge exemption rule applicable to broad-based index options, Commentary .02 to PCX Rule 7.6, will apply to Index options. With regard to FLEX Index options, the Exchange is proposing to establish position limits of 200,000 contracts on the same side of the market pursuant to PCX Rule 8.107(a). The PCX also represents that it has the necessary systems capacity to support new series that would result from the introduction of the Index options.

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month and trading in the expiring contract month on the PCX will normally cease at 1:15 p.m. (Pacific Time) on the business day preceding the last day of trading in the component securities of the Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of Index options at expiration will be determined from opening prices established at the open of the regular Friday trading sessions at the appropriate exchange or market system. If a stock does not trade during this interval or if it fails to open for trading, the last available price of the stock will be used in the calculation of the Index.[12] When the last trading day is moved in accordance with Exchange holidays (such as when the PCX is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of Index options at expiration will be determined at the open of the regular Thursday trading sessions.

The Exchange will apply its existing index option surveillance procedures to Index options. In addition, as a member of the Intermarket Surveillance Group (''ISG''), the Exchange has entered into a surveillance sharing agreement with the NYSE, the Amex and the NASD which will enable the Exchange to obtain information concerning the trading of the component stocks of the Index.[13]

Finally, the Exchange proposes to eliminate PCX Rule 7.13 regarding limitation of liability and replace it with a more general rule addressing the same issue.[14]

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The PCX does not believe that the proposed rule change will impose any inappropriate 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 on the proposed rule change were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[10] *See* PCX Rule 6.72.

[11] For example, on June 18, 1997, a position of 37,500 would have a dollar value of $1.17 billion (37,500 times the Index value of 311.68 times the Index multiplier of 100). For a comparison of position limits on similar indices, *see* Securities Exchange Act Release No. 32554 (June 29, 1993) 58 FR 36492 (July 7, 1993) (order approving increase in position and exercise limits on the Wilshire Small Cap Index to 37,500 contracts on the same side of the market with no more than 22,500 of such contracts in the series with the nearest expiration date) and Securities Exchange Act Release No. 36504 (November 22, 1995) 60 FR 61275 (November 29, 1995) (order approving increase in position and exercise limits on the PSE Technology Index to 37,500 contracts on the same side of the market with no more than 22,500 of such contracts in the series with the nearest expiration date).

[12] If a stock does not trade during the opening of the regular Friday trading session at the appropriate exchange or market system, or if it fails to open for trading, then pursuant to PCX Rule 7.8(e), the last reported sale price of stock will be used in the calculation of the Index, unless the exercise settlement amount is fixed in accordance with the Rules and By-Laws of The Option Clearing Corporation.

[13] The ISG was formed on July 14, 1983, among other things, to coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. The primary markets for the underlying securities in the Index are all members of the ISG. *See* ISG Agreement, July 14, 1983. The participation of exchanges within the ISG and their sharing of surveillance information is governed by the ISG Agreement. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by the ISG members on January 29, 1990. See Second Amendment to ISG Agreement, January 29, 1990. There are currently 23 members of the ISG.

[14] Exhibit A of Amendment No. 1 to the proposed rule change contains the proposed replacement language for PCX Rule 7.13.

publishes its reasons for so finding or (ii) as to which the PCX consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–97–29 and should be submitted by August 26, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–20510 Filed 8–4–97; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 15,1997 [62 FR, 26845].

**DATES:** Comments must be submitted on or before September 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

**SUPPLEMENTARY INFORMATION:**

### United States Coast Guard (USCG)

*Title:* Recordkeeping of Refuse Discharges From Ships.

*OMB No.* 2115–0613.

*Type of Request:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Affected Public:* Masters or persons-in-charge of U.S. ships, and fixed or floating platforms.

*Abstract:* The collection of Information requires certain U.S. ships and fixed or floating platforms to maintain and record into a refuse record book, the discharge and disposal operations of their generated waste.

*Need:* 33 CFR 151.55 gives the Coast Guard the authority to prescribe regulations to require certain U.S. ships, fixed or floating platforms, to maintain onboard, documentation of the disposal of their generated waste.

*Annual Estimated Burden Hours:* 526,624.

*Addressee:* Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention USCG Desk Officer. Comments are invited on: The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on July 30, 1997.

**Vanester M. Williams,**

*Clearance Officer, United States Department of Transportation.*

[FR Doc. 97–20520 Filed 8–4–97; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–97–41]**

### Petitions For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before August 25, 1997.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTSfaa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office

[15] 17 CFR 200.30–3(a)(12).

of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 29, 1997.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Dispositions of Petitions**

*Docket No.:* 27188.

*Petitioner:* Knighthawk Air Express Ltd.

*Sections of the FAR Affected:* 14 CFR 61.77(a).

*Description of Relied South/ Disposition:* To permit Knighthawk pilots to be issued special purpose pilot certificates to perform pilot duties on a civil airplane of U.S. registry, a Falcon 20D, Registration No. N950RA, without that airplane meeting the passenger seating configuration and payload capacity requirements of 14 CFR 61.77(a).

*Grant, July 17, 1997, Exemption No. 6660*

*Docket No.:* 28079.

*Petitioner:* General Electric Aircraft Engines.

*Sections of the FAR Affected:* 14 CFR 21.325(b)(1).

*Description of Relief Sought/ Disposition:* To permit General Electric Aircraft Engines (GEAE) to obtain export airworthiness approvals for Class I products manufactured under GEAE Production Certificate No. 107 at the Universal Maintenance Center of P.T. Industri Pesawat Terbang Nurtanio in Bandung, Indonesia.

*Grant, July 17, 1997, Exemption No. 6139A*

*Docket No.:* 28760.

*Petitioner:* Douglas Aircraft Company/ McDonnell Douglas Corporation.

*Section of the FAR Affected:* 14 CFR 25.785(d), 25.807(c)(1), 25.857(e), 25.1447(c)(1).

*Description of Relief Sought/ Disposition:* To allow for the accommodation of up to two supernumeraries immediately aft of the cockpit, and a crew rest facility immediately aft of the smoke barrier and crash net, on MD–11 freighter aircraft equipped with a Class E cargo compartment.

*Grant, July 14, 1997, Exemption No. 6656*

*Docket No.:* 22706.

*Petitioner:* Bankair, Inc.

*Sections of the FAR Affected:* 14 CFR 135.225(e)(1).

*Description of Relief Sought/ Disposition: To allow Bankair's pilots to operate Bankair's aircraft at any U.S. military base that has adopted the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS) used for determining lower-than-standard departure minimums using takeoff visibility minimums that are less than 1 mile and equal to or greater than the landing visibility minimums established for those airfields.*

*Grants, July 22, 1997, Exemption No. 6661*

*Docket No.:* 21605.

*Petitioner:* Alaska Airlines, Inc.

*Sections of the FAR Affected:* 14 CFR 121.574(a) (1) and (3).

*Description of Relief Sought/ Disposition: To permit the carriage and operation of oxygen storage and dispensing equipment for medical use by patients requiring emergency or continuing medical attention while being carried as passengers where the oxygen equipment is furnished and maintained by hospitals treating the patients, within the states of Alaska or Washington, subject to certain conditions and limitations.*

*Grant, July 21, 1997, Exemption No. 3850F*

*Docket No.:* 27230.

*Petitioner:* Era Aviation, Inc.

*Sections of the FAR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To allow Era to operate certain helicopters under the provisions of part 135 without TSO–C112 (Mode S) transponders.

*Grant, July 24, 1997, Exemption No. 5718B*

[FR Doc. 97–20566 Filed 8–4–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Research, Engineering and Development (R,E&D) Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development Advisory Committee. The meeting will be held on September 9–10, 1997 at the Holiday Inn Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia.

On Tuesday, September 9, 1997 the meeting will begin at 9:00 a.m. and end at 5:00 p.m. On Wednesday, September 10, 1997 the meeting will begin at 8:30 a.m. and end at 3:00 p.m. The meeting will consist of presentations on the FY 2005 Operational Concept, the NAS Architecture Version 3.0, the Flight 2000 Plan and FAA responses to committee recommendations.

Attendance is open to the interested public but limited to space available. Persons wishing to attend the meeting or obtain information should contact Lee Olson at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW, Washington, DC 20591 (202) 267–7358.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on July 29, 1997.

**Jan Brecht-Clark,**

*Acting Director, Office of Aviation Research.*

[FR Doc. 97–20565 Filed 8–4–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petitions for Waivers of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received requests for waivers of compliance with certain requirements of its safety standards. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioners' arguments in favor of relief.

**National Railroad Passenger Corporation (Waiver Petition Docket Number PB–94–3)**

The National Railroad Passenger Corporation (Amtrak) seeks a waiver of compliance from certain sections of the Railroad Power Brakes and Drawbars regulations, 49 CFR part 232. In 1995, FRA granted a waiver (Waiver Petition Docket Number PB–94–3) to Amtrak to extend the frequency for the cleaning, oiling, testing, and stenciling (COT&S) of passenger cars equipped with 26–C brake equipment from the required 36 months to 48 months. Amtrak requests that commuter rail passenger cars owned by the following commuter agencies, but operated and maintained by Amtrak under individual contract agreements, be under the maintenance conditions set forth in Waiver Docket Number PB–94–3:

Connecticut Department of Transportation—31 coaches

Maryland Rail Commuter—110 coaches
Massachusetts Bay Transportation Authority—358 coaches
North Carolina Department of Transportation—14 coaches
Virginia Railway Express—59 coaches

Please note that some of the commuter agencies' coaches are cab control cars. 49 CFR 229.14 requires that components added to the passenger car that enable it to serve as a lead locomotive, control the locomotive actually providing tractive power, and otherwise control the movement of the train, are subject to the requirements of 49 CFR part 229. Therefore, only the brake system components not subject to the requirements of 49 CFR 229.14 are to be considered in this petition for any cab control car.

Amtrak declares that the commuter rail equipment is maintained in accordance to all applicable FRA requirements, Association of American Railroad's maintenance practices, and Amtrak's standard maintenance procedures. Amtrak also contends that the service conditions on the commuter car fleets are considered to be consistent with those conditions under which Amtrak's four year test for COT&S was conducted.

**Norfolk Southern Corporation (Waiver Petition Docket Number RST–96–3)**

The Norfolk Southern Corporation (NS) seeks a waiver from the requirements of 49 CFR Part 213.241 to allow it to submit and maintain track inspection records via an electronic system.

In its petition, NS refers to the provisions of § 213.241 which require that each record of an inspection be prepared on the day the inspection is made and signed by the person making the inspection. NS believes that these provisions do not specifically mandate a paper-based recordkeeping system, and states that to the extent that this part implies such a requirement, it be granted a waiver to substitute electronic records for paper ones. NS further requests that it be permitted to input the records of inspection within one day's time of the date on which the inspection is made.

NS states that the use of the electronic system would allow the railroad to significantly reduce the volume of paper reports (estimated to average approximately 600 reports each week) and the associated handling costs. NS also states that the electronic reporting system could be effected without cost to any party and without disrupting or destroying the integrity of the present record system.

Under the proposed reporting procedure, track inspectors would continue to make their inspections and gather information on handwritten notes or, potentially, laptop computers. The proposed filing system would merely alter the way in which the inspection report is submitted, stored, and retrieved. Each track inspector would have his/her own personal electronic identity. The track inspector would call up a form on NS's e-mail network, insert the pertinent information on the form, and send it electronically to the regional offices. Upon receipt via e-mail in the regional offices, hard copy reports would be placed into files along the same lines as are currently used. In the future, NS states that it will develop a separate database to store all track inspection reports.

NS declares that its policy prohibits the sharing and duplication of passwords, thus preserving the uniqueness of each user's identity. Once the inspection report is completed by the inspector, the computer system would not accept subsequent alterations or modifications of the report. The computer system would allow subsequent access to such reports, or compilations of information generated therefrom, but would limit this access to a read-only basis.

NS anticipates that, in virtually all instances, the record of inspection will be prepared and entered into the electronic system on the inspection date. However, NS states that it is possible for the input process to be delayed in rare instances, such as when the system mainframe computer is taken off-line for periodic software maintenance, when the reporting inspector is called out to respond to an emergency situation, or when the inspector is located at a site where he/she does not have access to a terminal. NS asks that it be granted the one-day grace period for these rare circumstances.

NS believes that the granting of the petition would provide positive benefits for all parties involved and an immediate increase in efficiency while reducing costs.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–94–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Mail Stop 25, Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, NW., Room 7051, Washington, DC 20005.

Issued in Washington, D.C. on July 29, 1997.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 97–20514 Filed 8–4–97; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

**Block Signal Application (BS–AP)–No. 3432**

*Applicant:* CSX Transportation, Incorporated, Mr. R. M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, on the single main track, at Haines City, Florida, milepost A–828.38, Sanford Subdivision, Jacksonville Service Lane, consisting of the discontinuance and removal of controlled signals 106RA and 106LA.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation,

due to the previous removal of the siding.

**BS–AP–No. 3433**

*Applicant:* Soo Line Railroad Company, Mr. M. S. Hanson, District Manager Engineering Services, Canadian Pacific Railway, 105 South 5th Street, Box 530, Minneapolis, Minnesota 55440.

The Soo Line Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Preston Interlocking and Belt Junction Interlocking, and Belt Junction Interlocking and Spring Hill Interlocking, near Terre Haute, Indiana, on the Latta Subdivision, including installation of fixed approach signals.

The reason given for the proposed changes is to eliminate facilities no longer required for present day operation, as the only freight service on the line is one local, six days a week.

**BS–AP–No. 3434**

*Applicants:* South Kansas & Oklahoma Railroad and Kansas Eastern Railroad, Mr. David L. Buccolo, Vice President Rules and Safety, 315 West Third, Pittsburg, Kansas 66762.

The South Kansas & Oklahoma Railroad (SKOL) and the Kansas Eastern Railroad (KE) jointly seek approval of the proposed discontinuance and removal of automatic interlocking signals 1553 and 1554, at Cherryvale, Kansas, where a single main track of the SKOL, Tulsa Subdivision, milepost 155.6, crosses at grade, a single main track of the KE, Neodesha Subdivision, milepost 386.8. The proposal includes removal of the automatic gate mechanism, retaining a manual gate to be left lined for the last train movement.

The reasons given for the proposed changes are that the equipment is antiquated and replacement parts are almost impossible to obtain, it will reduce unnecessary maintenance expense, train operations in the area have changed and SKOL and KE are now joint operating lines, and also help avoid delays and unnecessary blockages of the highway road crossings in the area.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Mail Stop 25, Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 29, 1997.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 97–20515 Filed 8–4–97; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. 97–049; Notice 1]**

### Notice of Receipt of Petition for Decision That Nonconforming 1988–1989 Audi 80 Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1988–1989 Audi 80 passenger cars are eligible for importation.

**SUMMARY:** This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1988–1989 Audi 80 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is September 4, 1997.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.].

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1988–1989 Audi 80 passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1988–1989 Audi 80 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1988–1989 Audi 80 passenger cars to their U.S. certified counterpart, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1988–1989 Audi 80 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are

capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1988–1989 Audi 80 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. *102 Transmission Shift Lever Sequence * * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Resistance for the Driver from the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages, 212 Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that non-U.S. certified 1988–1989 Audi 80 passenger cars are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the convex passenger side rearview mirror.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of either a U.S.—model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer. The petitioner states that the vehicles are equipped with a combination lap and shoulder restraint that adjusts by means of an automatic retractor and releases by means of a single push button at each front designated seating position, with a combination lap and shoulder restraint that releases by means of a single push button at each rear outboard designated seating position, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to non- U.S. certified 1988–1989 Audi 80 passenger cars to meet the requirements of 49 CFR Part 565.

Additionally, the petitioner states that the bumpers on non-U.S. certified 1988–1989 Audi 80 passenger cars must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above 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. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 30, 1997.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 97–20521 Filed 8–4–97; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. 97–048; Notice 1]**

### Notice of Receipt of Petition for Decision That Nonconforming 1990–1994, 1996 and 1997 Saab 900 SE Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1990–1994, 1996 and 1997 Saab 900 SE passenger cars are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990–1994, 1996, and 1997 Saab 900 SE passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into, and sale in, the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is September 4, 1997.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

#### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into, and sale in, the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to

conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1990–1994, 1996, and 1997 Saab 900 SE passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are the 1990–1994, 1996, and 1997 Saab 900 SE that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1990–1994, 1996, and 1997 Saab 900 SE passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1990–1994, 1996, and 1997 Saab 900 SE passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1990–1994, 1996, and 1997 Saab 900 SE passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1990–1994, 1996 and 1997 Saab 900 SE passenger cars comply with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that non-U.S. certified 1990–1994, 1996 and 1997 Saab 900 SE passenger cars are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the convex passenger side rearview mirror.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's positions, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters on vehicles that are so-equipped if these are not U.S.-model components. (The petitioner states that the 1990 Saab 900 SE has no air bags and that the 1991 through 1993 models are equipped with driver's side air bags alone.) The petitioner states that the vehicles are also equipped with a combination lap and shoulder restraint that adjusts by means of an automatic retractor and releases by means of a single push button in each front designated seating position, with a combination lap and shoulder restraint that releases by means of a single push button in each rear outboard designated seating position, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate that meets the requirements of 49 CFR part 565 will be affixed to the non-U.S. certified Saab 900 SE passenger cars.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above 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. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 30, 1997.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 97–20522 Filed 8–4–97; 8:45 am]

BILLING CODE 4910–59–U

Federal Register

Tuesday
August 5, 1997

## Part II

# Environmental Protection Agency

**40 CFR Part 131**

**Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California; Proposed Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 131

**[WH–FRL–5866–9]**

**RIN 2040–AC44**

## Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes for the State of California, numeric water quality criteria for priority toxic pollutants necessary to fulfill the requirements of section 303(c)(2)(B) of the Clean Water Act (CWA) in the State of California. This rule also proposes an authorizing compliance schedule provision.

EPA is proposing this rule based on the Administrator's determination that criteria are necessary in the State of California to meet the requirements of CWA section 303(c)(2)(B). This section of the CWA requires states to adopt numeric water quality criteria for priority toxic pollutants for which EPA has issued CWA section 304(a) criteria guidance and whose presence or discharge could reasonably be expected to interfere with designated uses. Priority toxic pollutants are identified in 40 CFR 131.36.

EPA is proposing this rule to fill a gap in California water quality standards that was created in 1994 when a State Court overturned the State's water quality control plans which contained water quality criteria for priority toxic pollutants for which EPA had issued CWA section 304(a) criteria guidance. Thus, the State of California is currently without numeric water quality criteria for many priority toxic pollutants as required by the CWA, necessitating this action by EPA.

When these proposed federal criteria take effect, they will create legally applicable water quality standards in the State of California for inland surface waters, enclosed bays and estuaries for all purposes and programs under the CWA.

**DATES:** All written comments received on or before September 26, 1997 will be considered in the preparation of the final rule. A public hearing will be held on September 17, 1997, in San Francisco, California, and on September 18, 1997, in Los Angeles, California. Both oral and written comments will be accepted at the hearings.

**ADDRESSES:** Written comments should be addressed to Diane E. Frankel, P.E., Esq., California Toxics Rule Project Manager, U.S. Environmental Protection Agency, Region 9 (WTR–5), Water Management Division, 75 Hawthorne Street, San Francisco, California 94105.

Written comments are encouraged on paper or computer disk by mail. Faxed comments will not be accepted. For comments on paper, an original and two copies must be submitted. For computerized comments, Wordperfect or ASCII format must be used. Comments previously submitted for other **Federal Register** notices which are relevant to this notice must be resubmitted in their entirety to be considered for this proposed action.

A public hearing will be held at USEPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105, from 1–5 p.m. on September 17, 1997. A public hearing will also be held at the Los Angeles Department of Water and Power, 111 North Hope Street, Los Angeles, California, 90012, from 1–5 p.m. on September 18, 1997.

The public may inspect the administrative record for this rulemaking, including documentation supporting the aquatic life and human health criteria, at the U.S. Environmental Protection Agency, Region 9, Water Management Division, 75 Hawthorne Street, San Francisco 94105 (telephone: 415–744–2125) on weekdays during the Agency's normal business hours of 8:00 a.m. to 4:30 p.m. A reasonable fee will be charged for photocopies.

**FOR FURTHER INFORMATION CONTACT:** Diane E. Frankel, P.E., Esq. or Philip Woods, U.S. Environmental Protection Agency, Region 9 (WTR–5), Water Management Division, 75 Hawthorne Street, San Francisco, California 94105, 415–744–2004 or 415–744–1997, respectively.

**SUPPLEMENTARY INFORMATION:** This preamble is organized according to the following outline:



*Potentially Affected Entities:* Citizens concerned with water quality in California may be interested in this rulemaking. Entities discharging pollutants to waters of the United States in California could be indirectly affected by this rulemaking since water quality criteria are used to create water quality standards which in turn are used in developing National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities which may ultimately be indirectly affected include:

| Category | Examples of potentially indirectly affected entities |
|---|---|
| Industry ..... | Industries discharging pollutants to surface waters in California. |
| Municipalities ..... | Publicly-owned treatment works discharging pollutants to surface waters in California. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES regulated entities likely to be indirectly affected by this action. This table lists the types of entities that EPA is now aware could potentially be indirectly affected by this action. If you have questions regarding this section consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## A. Introduction and Overview

*1. Introduction*

This section of the preamble introduces the topics which are addressed below and provides a brief overview of EPA's basis and rationale for proposing federal criteria for the State of California. Section B briefly describes the evolution of the efforts to control toxic pollutants; these efforts include the changes enacted in the 1987 CWA Amendments which are the basis for this rule. Section C summarizes California's efforts since 1987 to implement the requirements of CWA section 303(c)(2)(B) and describes EPA's procedure and actions for determining whether California has fully implemented CWA section 303(c)(2)(B). Section D provides the rationale and approach for developing the proposed rule, including a discussion of EPA's legal basis for this proposal. Section E describes the development of the criteria included in this rule. Section F summarizes the provisions of the proposed rule and discusses implementation issues. Sections G, H, I, J, K, and L briefly address the requirements of Executive Orders 12866 and 12875, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, the Paperwork Reduction Act, and the Endangered Species Act, respectively.

Since detailed information concerning many of the topics in this preamble was published previously in the **Federal Register** in preambles for other rulemakings, references are frequently made to those preambles. Those rulemakings include: Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants, 57 FR 60848, December 22, 1992 (referred to as the National Toxics Rule or NTR); and the NTR as amended by Administrative Stay of Federal Water Quality Criteria for Metals and Interim Final Rule, Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance—Revision of Metals Criteria, 60 FR 22228, May 4, 1995 (referred to as the National Toxics Rule [NTR], as amended). The NTR, as amended, is codified at 40 CFR 131.36. A copy of the NTR, as amended, and its preambles are contained in the administrative record for this rulemaking.

*2. Overview*

This proposed rule would establish ambient water quality criteria for priority toxic pollutants in the State of California. The criteria in this proposal would supplement the water quality criteria promulgated for California in the NTR, as amended. In 1991, EPA approved a number of water quality criteria (discussed in section C, below), for the State of California. Since EPA had approved these criteria, it was not necessary to include them in the NTR. However, the EPA-approved criteria were subsequently invalidated in State litigation. Thus, this proposal contains criteria to fill the gap created by the State litigation.

This proposed rule does not change or supersede any criteria previously promulgated for the State of California in the NTR, as amended. Criteria which EPA promulgated for California in the NTR, as amended, are footnoted in the proposed table at 131.38(b)(1), so that when this proposed rule is promulgated, readers may see the criteria promulgated in the NTR, as amended, for California and the criteria promulgated through this rulemaking for California in the same table.

This proposed rule is not intended to apply to waters within Indian Country. EPA recognizes that there are possibly waters located wholly or partly in Indian Country that are included in the State's basin plans. EPA will work with the State and Tribes to identify any such waters and to seek comment from those entities on whether EPA should include those waters in the final rulemaking or take other actions to protect water quality in Indian Country. EPA also solicits comment from the public on this approach.

This rule is important for several environmental, programmatic and legal reasons. Control of toxic pollutants in surface waters is necessary to achieve the CWA's goals and objectives. Many of California's monitored river miles, lake acres, and estuarine waters have elevated levels of toxic pollutants. Recent studies on California water bodies indicate that elevated levels of toxic pollutants exist in fish tissue which result in fishing advisories or bans. These toxic pollutants can be attributed to, among other sources, industrial and municipal discharges.

Water quality standards for toxic pollutants are important to State and EPA efforts to address water quality problems. Clearly established water quality goals enhance the effectiveness of many of the State's and EPA's water programs including permitting, coastal water quality improvement, fish tissue quality protection, nonpoint source controls, drinking water quality protection, and ecological protection. Numeric criteria for toxic pollutants allow the State and EPA to evaluate the adequacy of existing and potential control measures to protect aquatic ecosystems and human health. Numeric criteria also provide a more precise basis for deriving water quality-based effluent limitations in National Pollutant Discharge Elimination System (NPDES) permits to control toxic pollutant discharges. Congress recognized these issues when it enacted section 303(c)(2)(B) to the CWA.

While California recognizes the need for applicable water quality standards for toxic pollutants, its adoption efforts have been stymied by a variety of factors. The Administrator has determined that it must exercise its CWA authorities to move forward the toxic control program, consistent with the CWA and with the State of California's water quality standards program.

EPA's action will also help restore equity among the states. The CWA is designed to ensure all waters are sufficiently clean to protect public health and/or the environment. The CWA allows some flexibility and differences among states in their adopted and approved water quality standards, but it should be implemented in a manner that ensures a level playing field among states. Although California has made important progress toward satisfying CWA requirements, it has not satisfied CWA section 303(c)(2)(B) by adopting water quality standards for toxic pollutants. This section was added to the CWA by Congress in 1987. The State of California is the only state in the Nation for which CWA section 303(c)(2)(B) remains substantially unimplemented after EPA's promulgation of the NTR in December of 1992. Section 303(c)(4) of the CWA authorizes the EPA Administrator to promulgate standards where necessary to meet the requirements of the Act. EPA has determined that this rule is a necessary and important component for the implementation of CWA section 303(c)(2)(B) in California.

EPA acknowledges that the State of California is working to satisfy CWA section 303(c)(2)(B). When the State formally adopts criteria consistent with its statutory requirements, as envisioned by Congress in the CWA, EPA will act to stay its rule. When any judicial

review of such State standards is complete and sustains the State standards, EPA will act to withdraw its rule.

**B. Statutory and Regulatory Background**

Section 303(c) of the 1972 Federal Water Pollution Control Act Amendments (FWPCA) established the statutory basis for the current water quality standards program. Although the major innovation of the 1972 FWPCA was technology-based controls, Congress maintained the concept of water quality standards both as a mechanism to establish goals for the Nation's waters and as a regulatory requirement when standardized technology controls for point source discharges and/or nonpoint source controls were inadequate.

Another major innovation in the 1972 FWPCA was the establishment of the National Pollutant Discharge Elimination System (NPDES) which requires point source dischargers to obtain a permit before legally discharging to waters of the United States. In addition to the permit limits established on the basis of technology (e.g. effluent limitations guidelines), the Act requires permits to include more stringent limits as necessary to meet instream water quality standards. See CWA section 301(b)(1)(C).

Water quality standards are comprised of designated uses, criteria to meet those uses, and an antidegradation policy. Water quality standards serve two main functions: they allow for assessment of water quality in a water body and they provide a basis for determining what effluent discharge limitations may be allowed in order to protect the designated uses of the water body.

In its initial efforts to control toxic pollutants, the FWPCA, pursuant to section 307, required EPA to designate a list of toxic pollutants and to establish toxic pollutant effluent standards based on a formal rulemaking record. Such rulemaking required formal hearings. EPA struggled with this unwieldy process and ultimately promulgated effluent standards for six toxic pollutants, pollutant families or mixtures. See 40 CFR Part 129. Congress amended section 307 in the 1977 CWA Amendments by endorsing the Agency's alternative procedure of regulating toxic pollutants by use of technology-based effluent limitations guidelines for toxic pollutants, by amending the procedure for establishing toxic pollutant effluent standards to provide for more flexibility in the hearing process for establishing a record, and by directing the Agency to include sixty-five specific pollutants or classes of pollutants on the toxic pollutant list. EPA published the required list on January 31, 1978 (43 FR 4109). This toxic pollutant list was the basis on which EPA focused its efforts on criteria development for toxic pollutants.

EPA selected key chemicals of concern within the sixty-five families of pollutants and identified a more specific list of 129 priority toxic pollutants. Two volatile chemicals and one water unstable chemical were removed from the list (see 46 FR 2266, January 8, 1981; 46 FR 10723, February 4, 1981), so that at present, there are 126 priority toxic pollutants. This list appears in 40 CFR 131.36.

Another critical section of the 1972 FWPCA was section 304(a). CWA section 304(a)(1) provides, in part, that EPA develop and publish criteria guidance for water quality reflecting the latest scientific knowledge on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants, and on the effects of pollutants on biological community diversity, productivity, etc.

In order to avoid confusion, it must be recognized that the CWA uses the term ''criteria'' in two separate ways. In CWA section 303(c), which is discussed above, the term is part of the definition of a water quality standard. That is, a water quality standard is comprised of designated uses and the criteria necessary to protect those uses. The term ''criteria'' refers to the ambient component of the water quality standard contained in state or federal law. However, CWA section 304(a)(1) directs EPA to publish water quality ''criteria'' guidance which encompass scientific assessments of the health and ecological effects of various pollutants listed pursuant to CWA section 307(a)(1) and which are used to support development of ambient criteria as part of water quality standards. CWA section 304(a) criteria guidance are intended as guidance only and have no binding effect. States may consider these criteria guidance in adopting regulatory criteria.

To implement CWA section 304(a)(1), EPA initially produced a series of scientific water quality criteria guidance documents. EPA's most recently published criteria documents are summarized in one document entitled, Quality Criteria for Water 1986 (1986 ''Gold Book''). EPA has updated many of the criteria since publication of the 1986 Gold Book. EPA's criteria guidance (both the earlier documents and updates including those in the Agency's Integrated Risk Information System [IRIS]), provide a comprehensive toxicological evaluation of each chemical and the individual criteria recommendations, as updated, are the official guidance. For toxic pollutants, the recommendations tabulate the relevant acute and chronic toxicity information for aquatic life and derive the criteria maximum concentrations (acute criteria) and criteria continuous concentrations (chronic criteria) which the Agency recommends to protect aquatic life resources. For human health criteria, the recommendations provide the appropriate reference doses, and if appropriate, the carcinogenic slope factors, and derives recommended criteria. The details of this process are discussed in a later part of this preamble.

Criteria documents, along with any more recent scientific data and information, may be used to interpret a state's narrative criterion pursuant to 40 CFR 122.44(d)(1)(vi), and serve to establish State and EPA permit discharge limits pursuant to CWA section 301(b)(1)(C) which requires NPDES permits to contain limitations required to implement any applicable water quality standard established in the CWA.

In support of the November, 1983 water quality standards rulemaking, EPA issued program guidance entitled, Water Quality Standards Handbook (December 1983) simultaneously with the publication of the final rule. The forward to that guidance noted EPA's two-fold water quality based approach to controlling toxic pollutants: chemical specific numeric criteria and biological testing in whole effluent or ambient waters to comply with narrative ''no toxics in toxic amounts'' standards. More detailed programmatic guidance on the application of biological testing was provided in the *Technical Support Document for Water Quality-Based Toxics Control* (TSD) (EPA 440/4–85–032, September 1985). This document provided the needed information to convert chemical specific and biologically based criteria into water quality standards for ambient receiving waters and permit limits for discharges to those waters. The TSD focused on the use of toxicity testing of effluent (whole effluent testing or WET methods) to develop effluent limitations within discharge permits. Such effluent limits were designed to implement the ''free from toxicity'' narrative standards in state water quality standards. The TSD also focused on water quality standards. Procedures and policy were presented

for appropriate design flows for EPA's section 304(a) acute and chronic criteria. In 1991, EPA revised and expanded the TSD. (*Technical Support Document for Water Quality-Based Toxics Control* (TSD), (EPA 505/2–90–001, March 1991).) A notice of availability was published in the **Federal Register** on April 4, 1991 (56 FR 13827). All references in this preamble are to the revised TSD.

In 1987, Congress enacted stringent new water quality standard provisions in the Water Quality Act amendments. The 1987 Amendments to the CWA (P.L. 100–4) added section 303(c)(2)(B) which provides:

> Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act for which criteria have been published under section 304(a), the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

The addition of this new requirement to the existing water quality standards review and revision process of CWA section 303(c) did not change the existing procedural or timing provisions. CWA section 303(c)(1) still required that states review their water quality standards at least once each three year period and transmit the results to EPA for review. EPA's oversight and promulgation authorities and statutory schedules in CWA section 303(c)(4) were likewise unchanged. Rather, the provision required the states to place heavy emphasis on adopting numeric chemical-specific criteria for toxic pollutants (rather than narrative approaches) during the next triennial review. Congress was frustrated that states were not using the numerous CWA section 304(a) criteria guidance that EPA had and was continuing to develop, to assist states in controlling the discharge of priority toxic pollutants. Accordingly, Congress explicitly mandated that states adopt numeric criteria for toxic pollutants where the discharge or presence of such pollutants could reasonably be expected to interfere with such designated uses.

In response to this requirement, EPA strengthened its efforts to assist state adoption of water quality standards for priority toxic pollutants. This included developing and issuing guidance for states on acceptable implementation procedures for several new sections of the CWA, including sections 303(c)(2)(B) and 304(l). EPA, in devising guidance for CWA section 303(c)(2)(B), attempted to provide states the maximum flexibility that complied with the express statutory language but also with the overriding Congressional objective: Prompt adoption and implementation of numeric toxic pollutant criteria where necessary to protect designated uses. EPA believed that flexibility was important so that each state could satisfy CWA section 303(c)(2)(B) and to the extent possible, accommodate its existing water quality standards regulatory approach. EPA's program guidance was issued in final form on December 12, 1988 and the availability of the guidance was published in a **Federal Register** notice on January 5, 1989 (54 FR 346).

EPA's section 303(c)(2)(B) program guidance identified several options that could be used by a state to meet the requirement that the state adopt toxic pollutant criteria ''* * *the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses.'' These options are fully discussed in the guidance and in the preamble to the National Toxics Rule (NTR) at 57 FR 60853. One option is for a state to adopt statewide numeric criteria for all section 307(a) toxic pollutants for which EPA has developed section 304(a) criteria guidance, regardless of whether the pollutants are known to be present. This option is the most comprehensive approach to satisfy the statutory requirement, and ensures comprehensive coverage of the priority toxic pollutants with scientifically defensible criteria. This option would not impose more effluent limits on dischargers than any other option, because permit limits would only be based on the regulation of the particular toxic pollutants in their discharge and not on the total listing in the water quality standards. Actual permit limits should be the same under any option.

EPA's December 1988 guidance also stated that all state standards triennial reviews initiated after passage of the amended CWA must include a consideration of numeric toxic criteria.

Beyond the increased Congressional and public concern about the relative importance of toxic pollutant controls, there was increased evidence of toxic pollution problems in our Nation's waters. In response, in 1992, EPA promulgated the NTR pursuant to CWA section 303(c)(4)(B) and 40 CFR 131.22(b) to rectify program deficiencies in 14 states, including the State of California. The State of California was included for specific pollutants and for specific water bodies which corresponded with EPA's disapproval in November 1991 of a portion of each of two statewide plans. EPA did not promulgate criteria for those portions of the statewide plans which it approved.

Today's action proposes to add priority toxic pollutant criteria applicable to inland surface waters, enclosed bays and estuaries within the State of California.

### C. State of California Actions and Compliance Regarding Section 303(c)(2)(B) of the Clean Water Act (CWA)

*1. California Regional Water Quality Control Board Basin Plans, and the Inland Surface Waters Plan (ISWP) and the Enclosed Bays and Estuaries Plan (EBEP) of April 1991*

The State of California regulates water quality through its State Water Resource Control Board (SWRCB) and through nine Regional Water Quality Control Boards (RWQCBs). Each of the nine RWQCBs represents a different geographic area; area boundaries are generally along watershed boundaries. Each RWQCB maintains a Basin Plan which contains the designated uses of the water bodies within its respective geographic area within California. These designated uses (or ''beneficial uses'' under State law) together with legally-adopted criteria (or ''objectives'' under State law), comprise water quality standards for the water bodies within each of the Basin areas. Each of the nine RWQCBs undergoes a triennial Basin Planning review process, in compliance with CWA section 303. The SWRCB provides assistance to the RWQCBs.

Most of the Basin Plans contain conventional pollutant objectives such as dissolved oxygen. None of the Basin Plans contains a comprehensive list of priority toxic pollutant criteria to satisfy CWA section 303(c)(2)(B). The nine RWQCBs and the SWRCB had intended that the priority toxic pollutant criteria contained in the three SWRCB statewide plans, the Inland Surface Water Plan (ISWP), the Enclosed Bay and Estuary

Plan (EBEP), and the Ocean Plan, apply to all Basins and satisfy CWA section 303(c)(2)(B).

On April 11, 1991, the SWRCB adopted two statewide water quality control plans, the ISWP and the EBEP. These statewide plans contained narrative and numeric water quality criteria for toxic pollutants, in part to satisfy CWA section 303(c)(2)(B). The water quality criteria contained in the SWRCB statewide plans, together with the designated uses in each of the Basin Plans, created a set of water quality standards for waters within for the State of California.

Specifically, the two plans established water quality criteria or objectives for all fresh waters, bays and estuaries in the State. The plans contained water quality criteria for some priority toxic pollutants, provisions relating to whole effluent toxicity, implementation procedures for point and nonpoint sources, and authorizing compliance schedule provisions. The plans also included special provisions affecting waters dominated by reclaimed water (labeled as Category (a) waters), and waters dominated by agricultural drainage and constructed agricultural drains (labeled as Category (b) and (c) waters, respectively).

*2. EPA's Review of California Water Quality Standards for Priority Toxic Pollutants in the ISWP and EBEP, and the National Toxics Rule*

The EPA Administrator has delegated the responsibility and authority for review and approval or disapproval of all new or revised state water quality standards to the EPA Regional Administrators (see 40 CFR 131.21). Thus, state actions under CWA section 303(c)(2)(B) are submitted to the appropriate EPA Regional Administrator for review and approval.

In mid-April 1991, the SWRCB submitted to EPA for review and approval the two statewide water quality control plans—the ISWP and the EBEP. On November 6, 1991, EPA Region 9 formally concluded its review of the SWRCB's plans. EPA approved the narrative water quality criterion and the toxicity criterion in each of the plans. EPA also approved the numeric water quality criteria contained in both plans, finding them to be consistent with the requirements of section 303(c)(2)(B) of the CWA and with EPA's national criteria guidance published pursuant to section 304(a) of the CWA.

EPA noted the lack of criteria for some pollutants, and found that, because of the omissions, the plans did not fully satisfy CWA section 303(c)(2)(B). The plans did not contain criteria for all listed pollutants for which EPA had published national criteria guidance. The ISWP contained human health criteria for only 65 pollutants, and the EBEP contained human health criteria for only 61 pollutants for which EPA had issued section 304(a) guidance criteria. Both the ISWP and EBEP contained aquatic life criteria for all pollutants except cyanide and chromium III (freshwater only) for which EPA has CWA section 304(a) criteria guidance. The SWRCB's administrative record stated that all priority pollutants with EPA criteria guidance were likely to be present in California waters. However, the SWRCB's record contained insufficient information to support a finding that the excluded pollutants were not reasonably expected to interfere with designated uses of the waters of the State.

Although EPA approved the statewide selenium objective in the ISWP and EBEP, EPA disapproved the criteria for the San Francisco Bay and Delta, because there was clear evidence that the criteria would not protect the designated fish and wildlife uses (the California Department of Health Services had issued waterfowl consumption advisories due to selenium concentrations, and scientific studies had documented selenium toxicity to fish and wildlife). EPA restated its commitment to object to National Pollutant Discharge Elimination System (NPDES) permits issued for San Francisco Bay that contained effluent limits based on an objective greater than 5 ppb (four day average) and 20 ppb (1 hour average), the freshwater criteria. EPA reaffirmed its disapproval of site-specific selenium criteria for portions of the San Joaquin River, Salt Slough, and Mud Slough. EPA also disapproved of the categorical deferrals and exemptions. These disapprovals included the disapproval of the State's deferral of water quality objectives to effluent dominated streams (Category a) and to streams dominated by agricultural drainage (Category b), and the disapproval of the exemption of water quality objectives to constructed agricultural drains (Category c). EPA found the definitions of the categories imprecise and overly broad which could have led to an incorrect interpretation.

Since EPA had disapproved portions of each of the California statewide plans which were necessary to satisfy CWA section 303(c)(2)(B), California was included in EPA's promulgation of the National Toxics Rule (NTR) (40 CFR 131.36, 57 FR 60848). EPA promulgated specific criteria for certain water bodies in California.

The NTR was amended, effective April 14, 1995, to stay certain metals criteria which had been promulgated as total recoverable; effective April 15, 1995, EPA promulgated interim final metals criteria as dissolved concentrations for those metals which had been stayed (Administrative Stay of Federal Water Quality Criteria for Metals and Interim Final Rule, Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance—Revision of Metals Criteria; 60 FR 22228, May 4, 1995 [the NTR, as amended]). The stay was in response to a lawsuit against EPA challenging, among other issues, metals criteria expressed as total recoverable concentrations. A partial Settlement Agreement required EPA to stay specific metals criteria in the NTR. EPA then promulgated certain metals criteria in the dissolved form through the use of conversion factors. These factors are listed in the NTR, as amended. A scientific discussion of these criteria is found in the next section.

Since certain criteria have already been promulgated for specific water bodies in the State of California in the NTR, as amended, they are not within the scope of today's proposed rule. However, for clarity in reading a comprehensive rule for the State of California, these criteria are incorporated in proposed 40 CFR 131.38(d)(2). Footnotes to the Table in proposed 40 CFR 131.38(b)(1) and proposed 40 CFR 131.38(d)(3) clarify which criteria (and for which specific water bodies) have been promulgated by the NTR, as amended, and are therefore excluded from this proposed rule. The appropriate (freshwater or saltwater) aquatic life criteria which were promulgated in the NTR, as amended, for all inland surface waters and enclosed bays and estuaries include: chromium III and cyanide. The appropriate (water and organism or organism only) human health criteria which were promulgated in the NTR, as amended, for all inland surface waters and enclosed bays and estuaries include: antimony; thallium; asbestos; acrolein; acrylonitrile; carbon tetrachloride; chlorobenzene; 1,2-dichloroethane; 1,1-dichloroethylene; 1,3-dichloropropylene; ethylbenzene; 1,1,2,2-tetrachloroethane; tetrachloroethylene; 1,1,2-trichloroethane; trichloroethylene; vinyl chloride; 2,4-dichlorophenol; 2-methyl-4,6-dinitrophenol; 2,4-dinitrophenol; benzidine; bis(2-chloroethyl)ether; bis(2-ethylhexyl)phthalate; 3,3-dichlorobenzidine; diethyl phthalate;

dimethyl phthalate; di-n-butyl phthalate; 2,4-dinitrotoluene; 1,2-diphenylhydrazine; hexachlorobutadiene; hexachlorocyclopentadiene; hexachloroethane; isophorone; nitrobenzene; n-nitrosodimethylamine; and n-nitrosodiphenylamine. Other pollutant criteria were promulgated in the NTR, as amended, for specific water bodies, but not all inland surface waters and enclosed bays and estuaries.

*3. Status of Implementation of CWA Section 303(c)(2)(B)*

Shortly after the SWRCB adopted the ISWP and EBEP, several dischargers filed suit against the State alleging that it had not adopted the two plans in compliance with State law. The plaintiffs in a consolidated case included: the County of Sacramento, Sacramento County Water Agency; Sacramento Regional County Sanitation District; the City of Sacramento; the City of Sunnyvale; the City of San Jose; the City of Stockton; and Simpson Paper Company.

The dischargers alleged that the State had not adopted the ISWP and EBEP in compliance with the California Administrative Procedures Act (Gov Code. Section 11340, *et seq.*), the California Environmental Quality Act (Pub. Re Code, Section 21000, *et seq.*), and the Porter-Cologne Act (Wat. Code, Section 13200, *et seq.*). The allegation that the State did not sufficiently consider economics when adopting water quality objectives, as allegedly required by Section 13241 of the Porter Cologne Act, was an important issue in the litigation.

In October of 1993, the Superior Court of California, County of Sacramento, issued a tentative decision in favor of the dischargers. In March of 1994, the Court issued a substantively similar final decision in favor of the dischargers. Final judgments from the Court in July of 1994 ordered the SWRCB to rescind the ISWP and EBEP. On September 22, 1994, the SWRCB formally rescinded the two statewide water quality control plans. The State is currently in the process of readopting water quality control plans for inland surface waters, enclosed bays and estuaries.

CWA section 303(c)(2)(B) was fully implemented in the State of California from December of 1992, when the NTR was promulgated, until September of 1994, when the SWRCB was required to rescind the ISWP and EBEP. The provisions for California in EPA's NTR together with the approved portions of California's ISWP and EBEP implemented the requirements of CWA section 303(c)(2)(B). However, since September of 1994, when the SWRCB rescinded the ISWP and EBEP, the requirements of section 303(c)(2)(B) have not been fully implemented in California.

The scope of today's rule is to re-establish criteria for the remaining priority toxic pollutants to meet the requirements of section 303(c)(2)(B) of the CWA. Pursuant to section 303(c)(4), the Administrator has determined that it is necessary to include in today's proposed action criteria for priority toxic pollutants, which are not covered by the NTR, as amended, or by the State through site-specific criteria, for waters of the United States in the State of California.

*4. State-Adopted Site-Specific Priority Toxic Pollutant Criteria*

The State has the discretion to develop site-specific criteria when appropriate e.g., when statewide criteria appear over- or under-protective of designated uses. Periodically, the State through its RWQCBs will adopt site-specific criteria for priority toxic pollutants within respective Basin Plans. These criteria are intended to be effective throughout the Basin or throughout a designated water body. Under California law, these criteria must be publicly reviewed and approved by the RWQCB, the SWRCB, and the State's Office of Administrative Law (OAL). Once this adoption process is complete, the criteria become State law.

These criteria must be submitted to the EPA Regional Administrator for review and approval under CWA section 303. These criteria are usually submitted to EPA as part of a RWQCB Basin Plan Amendment, after the Amendment has been adopted under the State's process and has become State law.

*State-Adopted Site-Specific Criteria Under EPA Review: Basin Plan Updates:* The State of California has recently reviewed and updated all of its RWQCB Basin Plans. All of these Basin Plans have completed the State review and adoption process and have been submitted to EPA for review and approval. Some of the Basin Plans contain site-specific criteria. In these cases, the State-adopted site-specific criteria are used for water quality programs.

EPA Region 9 intends to make a determination on all State-adopted, site-specific criteria that are currently under EPA review. If, after this proposal, but before promulgation of this final rule, EPA approves any State-adopted site-specific criteria, the EPA Administrator may make a finding in the final rule that it will be unnecessary to promulgate criteria for those site-specific pollutants and associated water bodies. If EPA disapproves any State-adopted site-specific criteria, today's proposed statewide criteria would apply for those pollutants and associated water bodies.

However, if EPA promulgates statewide federal criteria as proposed in this rule, prior to a decision on any State-adopted site-specific criteria, the more stringent of the two criteria would be used for water quality programs. Both federal and State water quality programs must be satisfied, and application of the more stringent of the two criteria would satisfy both.

*Santa Ana River:* EPA is currently reviewing State-adopted site-specific criteria for copper, cadmium and lead for portions of the Santa Ana River. These criteria are contained in the Santa Ana Region Basin Plan Amendments (RWQCB for the Santa Ana Region). EPA intends to complete its review and make a final determination on these site-specific criteria prior to the promulgation of this rule.

If EPA approves the State-adopted site-specific criteria, the EPA Administrator can make a finding in the final rule that it will be unnecessary to promulgate federal criteria for those site-specific pollutants and associated water bodies. If EPA disapproves the State-adopted site-specific criteria, today's proposed statewide criteria, when promulgated final, would apply for those pollutants and water bodies.

*State-Adopted Site-Specific Criteria with EPA Approval:* In several cases, the EPA Regional Administrator has reviewed and approved of State-adopted site-specific criteria within the State of California. Three of these cases are discussed below separately.

Unfortunately, EPA does not have a complete listing of all of the site-specific criteria that may remain in place as State law after the State court decision vacated the ISWP and the EBEP. Consequently, EPA is proposing these criteria for all waters, except for those discussed below in the preamble and cited in the regulatory text. If the State or another member of the public, as confirmed by the State, indicates in comments that there is a site-specific, State criterion that was approved by EPA and continues to be an appropriate value, EPA would amend the regulatory text of the final rule such that the otherwise applicable criteria would not apply in that instance.

*Sacramento River:* EPA has approved site-specific criteria for copper, cadmium and zinc in the Sacramento River, upstream of Hamilton City, in the

Central Valley Region (RWQCB for the Central Valley Region) of the State of California. EPA approved these site-specific criteria by letter dated August 7, 1985. Specifically, EPA approved for the Sacramento River (and tributaries) above Hamilton City, a copper criterion of 5.6 µg/l (maximum), a zinc criterion of 16 µg/l (maximum) and a cadmium criterion of 0.22 µg/l (maximum), all in the dissolved form using a hardness of 40 mg/l as $CaCO_3$. (These criteria were actually adopted by the State and approved by EPA as equations which vary with hardness.) These ''maximum'' criteria correspond to acute criteria in today's proposed rule. Therefore, federal acute criteria for copper, cadmium, and zinc for the Sacramento River (and tributaries) above Hamilton City are not necessary to protect the designated uses and are not included in the proposed rule. However, the EPA Administrator is making a finding that it is necessary to include *chronic* criteria for copper, cadmium and zinc for the Sacramento River (and tributaries) above Hamilton City, as part of the proposed statewide criteria in today's proposed rule.

*San Joaquin River:* Site-specific selenium criteria in portions of the San Joaquin River, in the Central Valley Region, are not included in this proposed rule because they either have been previously approved by EPA or promulgated by EPA as part of the NTR. EPA approved and disapproved State-adopted site-specific selenium criteria in portions of the San Joaquin River, in the Central Valley Region of the State of California (RWQCB for the Central Valley Region). EPA's determination on these site-specific criteria is contained in a letter dated April 13, 1990.

Specifically, EPA approved for the San Joaquin River, mouth of Merced River to Vernalis, an aquatic life selenium criterion of 12 µg/l (maximum with the understanding that the instantaneous maximum concentration may not exceed the objective more than once every three years). Today's proposed rule does not affect this federally-approved, State-adopted site-specific acute criterion, and it remains in effect for the San Joaquin River, mouth of Merced River to Vernalis. Therefore, an acute criterion for selenium in the San Joaquin River, mouth of Merced River to Vernalis is not necessary to protect the designated use and thus is not included in the proposed rule.

By letter dated April 13, 1990, EPA also approved for the San Joaquin River, mouth of Merced River to Vernalis, a State-adopted site-specific aquatic life selenium criterion of 5 µg/l (monthly mean); however, EPA disapproved a State-adopted site-specific selenium criterion of 8 µg/l (monthly mean—critical year only) for these waters. Subsequently, EPA promulgated a chronic selenium criterion of 5 µg/l (4 day average) for waters of the San Joaquin River from the mouth of the Merced River to Vernalis in the NTR. This chronic criterion applies to all water quality programs concerning the San Joaquin River, mouth of Merced River to Vernalis. Today's proposed rule does not affect the federally-promulgated chronic selenium criterion of 5 µg/l (4 day average) set forth in the NTR. This previously federally-promulgated criterion remains in effect for the San Joaquin River, mouth of Merced River to Vernalis.

*Grassland Water District, San Luis National Wildlife Refuge, and Los Banos State Wildlife Refuge:* EPA approved for the Grassland Water District, San Luis National Wildlife Refuge, and Los Banos State Wildlife Refuge, a State-adopted site-specific aquatic life selenium criterion of 2 µg/l (monthly mean) by letter dated April 13, 1990. This federally-approved, State-adopted site-specific chronic criterion remains in effect for the Grassland Water District, San Luis National Wildlife Refuge and Los Banos State Wildlife Refuge. Therefore it is not necessary to include in today's proposed rule, a chronic criterion for selenium for the Grassland Water District, San Luis National Wildlife Refuge and Los Banos State Wildlife Refuge.

### D. Rationale and Approach for Developing the Proposed Rule

This section explains EPA's legal basis for today's proposed rule, and discusses EPA's general approach for developing the specific requirements for the State of California.

In addition to Congressional directive, there are a number of environmental and programmatic reasons why establishing water quality standards for toxic pollutants in California is important. Control of toxic pollutants in surface waters is critical to the success of a number of CWA programs and objectives, including permitting, fish tissue quality protection, coastal water quality improvement, sediment contamination control, certain nonpoint source controls, pollution prevention planning, and ecological protection.

#### *1. Legal Basis*

CWA section 303(c) specifies that adoption of water quality standards is primarily the responsibility of the states. However, CWA section 303(c) also describes a role for the federal government to oversee state actions to ensure compliance with CWA requirements. If EPA's review of the states' standards finds flaws or omissions, then the CWA authorizes EPA to correct the deficiencies (see CWA section 303(c)(4)). This water quality standards promulgation authority has been used by EPA to issue final rules on several separate occasions, including the NTR, as amended, which promulgated criteria similar to those included here for a number of states. These actions have addressed both insufficiently protective state criteria and/or designated uses and failure to adopt needed criteria. Thus, today's action is not unique.

The CWA in section 303(c)(4) provides two bases for promulgation of federal water quality standards. The first basis, in paragraph (A), applies when a state submits new or revised standards that EPA determines are not consistent with the applicable requirements of the CWA. If, after EPA's disapproval, the state does not amend its rules so as to be consistent with the CWA, EPA is to promptly propose appropriate federal water quality standards for that state. The second basis for an EPA action is in paragraph (B), which provides that EPA shall promptly initiate promulgation ''* * * in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this Act.'' EPA is using section 303(c)(4)(B) as the legal basis for this proposed rule.

As stated in the preamble to the NTR, the Administrator's determination under CWA section 303(c)(4) that criteria are necessary to meet the requirements of the Act could be supported in several ways. EPA does not believe that it is necessary to support the criteria proposed today on a pollutant-specific, water body-by-water-body basis. For EPA to undertake an effort to conduct research and studies of each stream segment or water body across the State of California to demonstrate that for each toxic pollutant for which EPA has issued CWA section 304(a) criteria guidance there is a ''discharge or presence'' of that pollutant which could reasonably ''be expected to interfere with'' the designated use would impose an enormous administrative burden and would be contrary to the statutory directive for swift action manifested by the 1987 addition of section 303(c)(2)(B) to the CWA.

Consistent with EPA's approach in the NTR, EPA interprets section 303(c)(2)(B) of the CWA to allow EPA to act where the State has not succeeded in establishing numeric water quality standards for toxic pollutants. This

inaction can be the basis for the Administrator's determination under section 303(c)(4) that new or revised criteria are necessary to ensure designated uses are protected. Here, this determination is buttressed by the evidence in the record for the rule of the discharge or presence of priority toxic pollutants in the State's waters for which the State does not have numeric water quality criteria.

EPA's interpretation of section 303(c)(2)(B) is supported by the language of the provision, the statutory framework and purpose of section 303, and the legislative history. In adding section 303(c)(2)(B) to the CWA, Congress understood the existing requirements in section 303(c)(1) for triennial water quality standards review and submissions and in section 303(c)(4)(B) for promulgation. CWA section 303(c) includes numerous deadlines and section 303(c)(4) directs the Administrator to act ''promptly'' where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Act. Congress, by linking section 303(c)(2)(B) to the section 303(c)(1) three-year review period, gave States a last chance to correct this deficiency on their own. The legislative history of the provision demonstrates that chief Senate sponsors, including Senators Stafford, Chaffee and others wanted the provision to eliminate State and EPA delays and force quick action. Thus, to interpret CWA section 303(c)(2)(B) and (c)(4) to require such a cumbersome pollutant specific effort on each stream segment would essentially render section 303(c)(2)(B) meaningless. The provision and its legislative background indicate that the Administrator's determination to invoke her section 303(c)(4)(B) authority can be met by a generic finding of inaction by the State without the need to develop pollutant specific data for individual stream segments.

This determination is supported by information in the rulemaking record showing the discharge or presence of priority toxic pollutants throughout the State. While this data is not necessarily complete, it constitutes a strong record supporting the need for numeric criteria for priority toxic pollutants with section 304(a) criteria guidance where the State does not have numeric criteria.

Today's proposed rule would not impose any undue or inappropriate burden on the State of California or its dischargers. It merely puts in place numeric criteria for toxic pollutants that are already utilized in other states in implementing CWA programs. Under this rulemaking, the State of California retains the ability to adopt alternative water quality criteria simply by completing its criteria adoption process. Upon EPA approval of those criteria, EPA will initiate action to stay the federally-promulgated criteria.

*2. Approach for Developing the Proposed Rule*

In summary, EPA developed the criteria proposed in today's rule as follows. Where EPA promulgated criteria for California in the NTR, as amended, EPA has not acted to amend the criteria in the NTR, as amended. Where criteria for California were not included in the NTR, as amended, EPA used section 304(a) national criteria guidance documents as a basis for the criteria proposed in this rule. EPA then determined whether new information since the development of the national criteria guidance documents warranted any changes. New information came from two sources. For human health criteria, new or revised risk reference doses and cancer potency factors on EPA's Integrated Risk Information System (IRIS) as of October 1996 form the basis for criteria values different from the national criteria guidance documents. For aquatic life criteria, updated data sets resulting in revised criteria maximum concentrations (CMCs) and criteria continuous concentrations (CCCs) formed the basis for differences from the national criteria guidance documents. Both of these types of changes are discussed in more detail in the following section. This revised information was used to develop the water quality criteria proposed here for the State of California.

**E. Derivation of Criteria**

*1. Section 304(a) Criteria Guidance Process*

Under CWA section 304(a), EPA has developed methodologies and specific criteria guidance to protect aquatic life and human health. These methodologies are intended to provide protection for all surface waters on a national basis. The methodologies have been subject to public review, as have the individual criteria guidance documents. Additionally, the methodologies have been reviewed and approved by EPA's Science Advisory Board (SAB) of external experts.

EPA has included in the record of this rule the aquatic life methodology as described in ''Appendix B—Guidelines for Deriving Water Quality Criteria for the Protection of Aquatic Life and Its Uses'' to the ''Water Quality Criteria Documents; Availability'' (45 FR 79341, November 28, 1980) as amended by the ''Summary of Revisions to Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses'' (50 FR 30792, July 29, 1985). (Note: Throughout the remainder of this preamble, this reference is described as the 1985 Guidelines. Any page number references are to the actual guidance document, not the notice of availability in the **Federal Register**. A copy of the 1985 Guidelines is available through the National Technical Information Service (PB85–227049), is in the administrative record for this rule, and is abstracted in Appendix A of Quality Criteria for Water, 1986.) EPA has also included in the administrative record of this rule the human health methodology as described in ''Appendix C—Guidelines and Methodology Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents'' (45 FR 79347, November 28, 1980). (Note: Throughout the remainder of this preamble, this reference is described as the Human Health Guidelines or the 1980 Guidelines.) EPA also recommends that the following be reviewed: ''Appendix D—Response to Comments on Guidelines for Deriving Water Quality Criteria for the Protection of Aquatic Life and Its Uses,'' (45 FR 79357, November 28, 1980); ''Appendix E—Responses to Public Comments on the Human Health Effects Methodology for Deriving Ambient Water Quality Criteria'' (45 FR 79368, November 28, 1980); and ''Appendix B—Response to Comments on Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses'' (50 FR 30793, July 29, 1985). EPA placed into the administrative record for this rulemaking the most current individual criteria guidance for the priority toxic pollutants included in today's rule. (Note: All references to appendices are to the associated **Federal Register** publication.)

*2. Aquatic Life Criteria*

Aquatic life criteria may be expressed in numeric or narrative form. EPA's 1985 Guidelines describe an objective, internally consistent and appropriate way of deriving chemical-specific, numeric water quality criteria for the protection of the presence of, as well as the uses of, both fresh and marine water aquatic organisms.

An aquatic life criterion derived using EPA's CWA section 304(a) method ''might be thought of as an estimate of the highest concentration of a substance in water which does not present a significant risk to the aquatic organisms

in the water and their uses.'' (45 FR 79341.) The term ''their uses'' refers to consumption by humans and wildlife (1985 Guidelines, page 48). EPA's guidelines are designed to derive criteria that protect aquatic communities by protecting most of the species and their uses most of the time, but not necessarily all of the species all of the time (1985 Guidelines, page 1). EPA's 1985 Guidelines attempt to provide a reasonable and adequate amount of protection with only a small possibility of substantial overprotection or underprotection. As discussed in detail below, there are several individual factors which may make the criteria somewhat overprotective or underprotective. The approach EPA is using is believed to be as well balanced as possible, given the state of the science.

Numerical aquatic life criteria derived using EPA's 1985 Guidelines are expressed as short-term and long-term numbers, rather than one number, in order that the criteria more accurately reflect toxicological and practical realities. The combination of a criteria maximum concentration (CMC), a short-term concentration acute limit, and a criteria continuous concentration (CCC), a four-day average concentration chronic limit, provide protection of aquatic life and its uses from acute and chronic toxicity to animals and plants, and from bioconcentration by aquatic organisms, without being as restrictive as a one-number criterion would have to be. (1985 Guidelines, pages 4, 5.) The terms CMC and CCC are the scientifically correct names for the two (acute and chronic) values of a criterion for a pollutant; however, this document will also refer to acute criterion and chronic criterion to which they are more commonly referred.

The two-number criteria are intended to identify average pollutant concentrations which will produce water quality generally suited to maintenance of aquatic life and their uses while restricting the duration of excursions over the average so that total exposures will not cause unacceptable adverse effects. Merely specifying an average value over a time period is insufficient unless the time period is short, because excursions higher than the average can kill or cause substantial damage in short periods.

A minimum data set of eight specified families is required for criteria development (details are given in the 1985 Guidelines, page 22). The eight specific families are intended to be representative of a wide spectrum of aquatic life. For this reason it is not necessary that the specific organisms tested be actually present in the water body. States may develop site-specific criteria using native species, provided that the broad spectrum represented by the eight families is maintained. All aquatic organisms and their common uses are meant to be considered, but not necessarily protected, if relevant data are available.

EPA's application of guidelines to develop the criteria matrix in the proposed rule is judged by the Agency to be applicable to all waters of the United States, and to all ecosystems (1985 Guidelines, page 4). There are waters and ecosystems where site-specific criteria could be developed, as discussed below, but the State should identify those waters and develop the appropriate site-specific criteria.

Fresh water and salt water (including both estuarine and marine waters) have different chemical compositions, and freshwater and saltwater species rarely inhabit the same water simultaneously. To provide additional accuracy, criteria are developed for fresh water and for salt water.

Limitations of the analyses which may make the criteria underprotective include the fact that data for all species are not available and therefore not considered; the analysis also applies to criteria on an individual basis with no consideration of additive or synergistic effects, and the analysis does not consider impacts on wildlife, due principally to a lack of data. Chemical toxicity is often related to certain receiving water characteristics (pH, hardness, etc.) of a water body. Adoption of some criteria without consideration of these parameters could result in the criteria being overprotective.

a. Freshwater Criteria

For this proposal, EPA updated freshwater aquatic life criteria contained in CWA section 304(a) criteria guidance first published in the early 1980's and later modified in the NTR, as amended, for the following eleven pollutants: arsenic, cadmium, chromium (VI), copper, mercury, dieldrin, endrin, lindane (gamma BHC), nickel, pentachlorophenol, and zinc. These updates are explained in a technical support document entitled, *1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water,* (U.S. EPA–820–B–96–001, September 1996), available in the administrative record to this rulemaking; this document presents the derivation of each of the final CMCs and CCCs and the toxicity studies from which the updated freshwater criteria for the eleven pollutants were derived. The presentation of polychlorinated biphenyls (PCB) criteria in the criteria matrix for this proposal differs from that in the NTR, as amended; for this proposal, the criteria are expressed as a total of all aroclors, while for the NTR, as amended, the criteria are expressed for each aroclor. The mercury criteria also differ in this proposal due to the Agency's movement away from aquatic life criteria based on the Final Residue Value (FRV) procedure of the 1985 Guidance. Differences between the eleven CMCs and CCCs as contained in CWA section 304(a) criteria guidance documents and the CMCs and CCCs in this proposed rule can be attributed to one or more of the following reasons.

First, EPA derived and published CWA section 304(a) criteria guidance documents between 1980 and 1987. Some of the aquatic life criteria in this proposed rule were calculated using data published subsequent to the issuance of individual 304(a) criteria guidance documents or using other new information. The pollutants for which this applies are: arsenic, cadmium, chromium (VI), copper, mercury, dieldrin, endrin, lindane, nickel, pentachlorophenol, and zinc. The use of an updated database resulted in less restrictive acute and/or chronic criteria for cadmium and zinc as compared to the published criteria guidance documents. EPA believes that the differences between the proposed updated criteria and the national published criteria guidance documents are insignificant. However, EPA believes that it is appropriate to propose criteria in this rule based on the most recent data. The following table shows the differences between the proposed criteria for this rule and the 304(a) criteria guidance which were promulgated in the NTR, as amended. All values are in micrograms per liter or µg/l:

| Compound | Proposed freshwater | | NTR freshwater | |
|---|---|---|---|---|
| | CMC | CCC | CMC | CCC |
| Arsenic | [1,2] 340 | [1,2] 150 | [1,3] 360 | [1,3] 190 |

| Compound | Proposed freshwater | | NTR freshwater | |
|---|---|---|---|---|
| | CMC | CCC | CMC | CCC |
| Cadmium | [1,2,4] 4.3 | [1,2,4] 2.2 | [1,5] 3.7 | [1,5] 1.0 |
| Chromium (VI) | [1,2] 16 | [1,2] 11 | [1,3] 15 | [1,3] 10 |
| Copper | [1,2,4] 13 | [1,2,4] 9.0 | [1,5] 17 | [1,5] 11 |
| Nickel | [1,2,4] 470 | [1,2,4] 52 | [1,5] 1400 | [1,5] 160 |
| Zinc | [1,2,4] 120 | [1,2,4] 120 | [1,5] 110 | [1,5] 100 |
| Pentachloro-phenol | [2,6] 19 | [2,6] 15 | [6] 20 | [6] 13 |
| Lindane (gamma-BHC) | [2] 0.95 | ..... | [7] 2 | 0.08 |
| Dieldrin | [2] 0.24 | [2] 0.056 | [7] 2.5 | 0.0019 |
| Endrin | [2] 0.086 | [2] 0.036 | [7] 0.18 | 0.0023 |
| Mercury | [1,2,3] 1.4 | [1,2,3] 0.77 | [1,3] 2.1 | 0.012 |
| PCBs | ..... | [8,9] 0.014 | ..... | [8,10] 0.014 |
| Mercury | [1,3] 1.8 | [1,3] 0.94 | [1,3] 1.8 | 0.025 |
| PCBs | ..... | [8,9] 0.03 | ..... | [8,10] 0.03 |

[1] These freshwater and saltwater criteria for metals are expressed in terms of the dissolved fraction of the metal in the water column, not the total recoverable fraction. Criterion values were calculated by using EPA's CWA 304(a) criteria guidance values (described in the total recoverable fraction) and then applying conversion factors as in the NTR, as amended, (60 FR 22228, May 4, 1995 and 40 CFR part 131).

[2] This criterion has been recalculated pursuant to *1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water* (EPA–820–B–96–001, September 1996). See also the Great Lakes Water Quality Initiative (40 CFR Parts 9, 122, 123, 131, and 132; Final Water Quality Guidance for the Great Lakes System, Final Rule; 60 FR 15366, March 23, 1995) and *Great Lakes Water Quality Initiative Criteria Documents for the Protection of Aquatic Life in Ambient Water* (EPA–820–B–95–004, March 1995).

[3] Criteria for these metals are expressed as a function of the water-effect ratio (WER) as defined in 40 CFR 131.36(c).

[4] These freshwater aquatic life criteria for metals are expressed as a function of total hardness (mg/l as $CaCO_3$ ) in the water body. The equations are provided in the proposed rule at 40 CFR 131.38(b)(2). Values displayed above and in the proposed rule matrix correspond to a total hardness of 100 mg/l as $CaCO_3$.

[5] Freshwater aquatic life criteria for these metals are expressed as a function of total hardness (mg/l as $CaCO_3$), and as a function of the pollutant's water-effect ratio, WER, as defined in 40 CFR 131.36(c). The equations are provided in the NTR, as amended, and values above and in the rule matrix correspond to a total hardness of 100 mg/l as $CaCO_3$ and a water-effect ratio of 1.0.

[6] These freshwater aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows: (Values displayed above in the matrix correspond to a pH of 7.8.) CMC=exp(1.005 (pH)–4.830). CCC=exp(1.005(pH)–5.290).

[7] These aquatic life criteria for these pollutants were issued in 1980 utilizing the 1980 Guidelines for criteria development. The acute values shown are final acute values (FAV) which by the 1980 Guidelines are instantaneous values.

[8] The CAS numbers for the PCB compounds are 53469219, 11097691, 11104282, 11141165, 12672296, 11096825, and 12674112, respectively.

[9] This proposed criterion is the sum of all aroclors.

[10] This criterion was listed for each aroclor in the matrix at 40 CFR 131.36(b)(1).

Secondly, some of the 304(a) criteria guidance documents were derived using a methodology which preceded EPA's current methodology, the 1985 Guidelines (pages 16 and 17).

In this proposed rule, where sufficient data existed to use the 1985 Guidelines, EPA recalculated the criteria. The chemicals for which this applies are: dieldrin, endrin, and lindane (gamma BHC) (chronic criterion only). The NTR, as amended, however, did not update the 1980 criteria using the 1985 Guidelines.

Third, EPA has deleted some of the data used in deriving three criteria: specifically, the 1984 criterion for copper and the 1980 criteria for dieldrin and endrin, because under EPA's 1985 Guidelines, the toxicity testing procedure was unacceptable.

Fourth, in several of the 304(a) criteria guidance documents, the range of Species Mean Acute Values (SMAVs) or Species Mean Chronic Values (SMCVs) was greater than a factor of five for some genera. Because of this wide range, EPA set the Genus Mean Acute Values (GMAVs) or Genus Mean Chronic Values (GMCVs) for those genera equal to the lowest SMAV or SMCV for that genus in order to provide adequate protection to all tested species in the genus. The pollutants for which this applies are cadmium, copper and dieldrin.

In addition to the reasons cited earlier concerning differences between NTR, as amended, criteria and proposed CMCs for this rulemaking, several of the proposed CCCs are affected by a preference of using freshwater Acute-Chronic Ratios (ACRs). In some of the 304(a) criteria guidance documents, EPA had used saltwater ACRs in the calculation of freshwater Final Chronic Values (FCVs) when available. In updating criteria, EPA generally did not use saltwater ACRs when there were a sufficient number of acceptable freshwater ACRs to calculate a Final Acute-Chronic Ratio (FACR) because freshwater data is preferable for freshwater criteria. When there was an insufficient number of freshwater ACRs to calculate a FACR, EPA used saltwater ACRs with any acceptable freshwater ACRs. The pollutants for which this applies are: dieldrin, endrin and nickel. Removal of saltwater ACRs from the data sets had a minor effect on the resultant criteria.

Today's rule utilizes the Final Residue Value (FRV) procedure of the 1985 Guidelines for PCBs. The 1985 national methodology in the 1985 Guidelines indicates that the FRV is intended to prevent concentrations of pollutants in commercial or recreational aquatic species from affecting the marketability of those species or affecting wildlife that consume aquatic life. While in today's rule the FRV is used to calculate the chronic values for PCBs, EPA believes it may not be as protective as criteria derived from the Final Chronic Value (FCV). However, the use of the FRV in deriving the chronic values for PCBs represents EPA's best available scientific approach. The NTR, as amended, criteria for dieldrin, endrin, and mercury were based on FRVs calculated from FDA action levels. EPA now believes that the human health criteria proposed elsewhere in this notice will provide an appropriate level of protection to humans consuming freshwater fish and shellfish, but that use of the FDA action levels to protect aquatic life (fish and propagation of fish) is inappropriate. In this rule, EPA updated the chronic values for dieldrin, endrin and mercury based on Final Chronic Values (FCVs) calculated by dividing a Final Acute Value (FAV) by the Final Acute-Chronic Ratio (FACR).

The derivation of each of these criteria, and the toxicity studies upon

which they are based, are discussed in a technical support document entitled, *1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water* (EPA–820–B–96–001, September 1996). This document is available in the administrative record for this rulemaking.

b. Freshwater Acute Selenium Criterion

EPA is proposing a different freshwater acute aquatic life criterion for selenium in this proposed rule than was promulgated in the NTR, as amended. EPA's proposal here is consistent with EPA's recent (proposed) selenium criterion maximum concentration for the Water Quality Guidance for the Great Lakes System (61 FR 58444, November 14, 1996). This proposal takes into account data showing that selenium's two most prevalent oxidation states, selenite and selenate, present differing potentials for aquatic toxicity, as well as new data indicating that various forms of selenium are additive. Additivity increases the toxicity of mixtures of different forms of the pollutant. The new approach produces a different selenium acute criterion concentration, or CMC, depending upon the relative proportions of selenite, selenate, and other forms of selenium that are present. While these revisions may produce either a less or a more stringent acute criterion for selenium, depending on which form of the pollutant is predominant in a water body, the proposed freshwater acute criterion will protect aquatic life in fresh waters of the State of California.

*Derivation of the Current Freshwater Criterion for Selenium:* When EPA published a recommended freshwater aquatic life criterion for selenium in 1987, it considered both field data on chronic toxicity from Belews Lake in North Carolina and laboratory data showing chronic effects. A comparison of the data indicated that selenium was more toxic to aquatic life in the field than in standard laboratory toxicity tests. Consequently, to ensure that the criterion would protect aquatic life, EPA derived a chronic criterion, or a CCC, of 5 µg/l for total recoverable selenium from the field data. Because the Belews Lake study did not distinguish between selenite, selenate, and any other form of selenium, and because some forms of selenium can convert to other forms over time (U.S. EPA, 1987), EPA established a single CCC for selenium rather than a separate CCC for selenite and/or selenate.

EPA reasoned that acute effects would also be more severe in the field than in the laboratory. EPA, however, was not able to find any field studies assessing acute effects. Consequently, EPA back-calculated the CMC from the field-derived CCC for total selenium, arriving at a value of 19.98 µg/l, which it rounded to 20 µg/l. When EPA proposed and promulgated selenium criteria for the NTR, as amended, it used the same field-data approach and calculated a CMC of 20 µg/l and a CCC of 5 µg/l for all forms of selenium.

EPA noted that, had it concluded that laboratory data could serve as a basis for the selenium criteria, there were sufficient laboratory studies on acute effects to establish separate CMCs for both selenate and selenite. EPA calculated that a CMC for selenite (selenium IV) based on laboratory data might have been 185.9 µg/l, while a CMC for selenate (selenium VI) might have been 12.82 µg/l. As explained above, however, EPA chose to base the CMC on field data that did not differentiate between selenite and selenate.

EPA is proposing a different approach to that used in the NTR, amended, for the fresh waters of California covered by this proposed rule. EPA is proposing a new CMC for total selenium based on more recent studies which indicate that the toxicities of various forms of selenium are additive. EPA is proposing an equation that will allow calculation of a CMC for selenium based on the relative proportions of selenite, selenate and other selenium forms present in a specific water body. The toxicities for selenite and selenate used in this equation are based on the laboratory studies cited in the 1987 and 1995 selenium criteria documents, and are identical to the values calculated in those documents.

EPA continues to believe that the field data support a CCC of 5 µg/l for selenium. The chronic criterion addresses longer-term exposures to selenium under field conditions, including exposure through the food chain. EPA has no field data that can support different chronic criteria for different forms of selenium. Furthermore, EPA believes that current studies show that the various forms of selenium ''interconvert'' to other forms over these longer time frames, so that the relative proportions of the different forms change during the exposure period. A form that exhibits low toxicity at one point during the exposure period may convert to a different, more toxic form at a different point.

*Selenium Chemistry:* Selenium takes several forms in ambient waters which can significantly alter its toxicity to aquatic life, as shown below. Inorganic selenium has two oxidation states (i.e., selenium IV, or selenite, and selenium VI, or selenate), which can exist simultaneously in aerobic surface water at pH 6.5 to 9.0. Chemical conversion from one oxidation state to another often proceeds at such a slow rate in aerobic surface water that thermodynamic considerations do not determine the relative concentrations of the oxidation states. Although selenate (selenium VI) is thermodynamically favored in oxygenated alkaline water, substantial concentrations of both organoselenium (selenium minus II) and selenite (selenium IV) are not uncommon (Burton et al. 1980; Cutter and Bruland 1984; Measures and Burton 1978; North Carolina Department of Natural Resources and Community Development 1986; Robberecht and Van Gricken 1982; Takayanagi and Cossa 1985; Takayanagi and Wong 1984a,b: Uchida *et al.* 1980).

Various forms of organic selenium also occur in water (Besser *et al.* 1994; Cutter 1991). Toxicity data for some organic selenium forms are available and are compared below to toxicity data for selenite and selenate:

| Compound | Zebrafish [a] (mg/l) | C. riparius [b, c, d] (mg/l) | | Daphnia magnae [e] (mg/l) |
|---|---|---|---|---|
| Selenate | 18. | 16.2 | 10.5 | 2.84 |
| Seleno-DL-cystine | 12 | ..... | ..... | 2.01 |
| Selenite | 1. | 7.95 | 14.6 | 0.55 |
| Seleno-DL-methionine | 0.1 | ..... | ..... | 0.31 |
| Seleno-L-methionine | ..... | 5.78 | 6.88 | ..... |

[a] 10-day LC50 (Niimi and LaHam 1976).
[b] 48-hr LC50 (Ingersoll et al. 1990).
[c] River Water.
[d] 48-hr LC50 (Maier et al. 1993).
[e] 48-hr LC50 (Maier et al. 1993).

Cutter (1991) described methods for measuring total recoverable and dissolved selenate, selenite, organoselenium, and selenium in water, and other information concerning the measurement of selenium in water has been published by Besser et al. (1994), McKeown and Marinas (1986), Pitts *et al.* (1994), and Takayanagi and Cosa (1985).

EPA believes that recent studies demonstrate the acute toxicities of selenate, selenite, and one form of organoselenium are additive; that is, these forms are more toxic together then they are separately (Hamilton and Buhl 1990; Maier et al. 1993). The studies demonstrated additivity by comparing the toxicities of mixtures to the toxicities of the separate toxicants. Thus, EPA believes that it would be appropriate to establish separate CMCs for selenate and selenite only in situations in which either selenate or selenite is the only form of selenium in the water column. When more than one form occurs in the water, additivity should be taken into account so that the CMC for selenium is a function of the toxicities and concentrations of the forms. EPA is proposing an equation that can be used to derive an appropriate criterion for total selenium based on the relative concentrations of selenite, selenate, and all other forms of selenium found in a particular water body.

*Toxicity of Three Categories of Selenium:* Selenium (IV). EPA is proposing to rely on the laboratory data contained in the 1987 and 1995 criteria documents to establish an acute toxicity of 185.9 µg/l for selenite.

Selenium (VI). EPA is proposing to rely on the laboratory data contained in the 1987 and 1995 criteria documents to establish an acute toxicity of 12.83 µg/l for selenate.

Other Forms of Selenium. EPA has not found and believes that sufficient toxicity data do not exist to allow derivation of CMCs for other selenium compounds. Nevertheless, as indicated in the previous table, the acute toxicity of such other forms of selenium appears to be significant with toxicity increasing by as much as 180 times depending on the form of selenium and the test organism. Toxicity tests conducted on the other forms of selenium indicate that they can be more toxic than selenate and selenite. Consequently, in order not to ignore the toxicity of these other forms of selenium, EPA is proposing to assume that half of the measured or derived concentration of ''other'' selenium forms is as toxic as selenate and half is as toxic as selenite. EPA believes this default assumption is more reasonable than assuming either that the entire quantity of ''other'' forms is as toxic as either selenate or selenite, or that it is not toxic. Such assumptions would be more likely to over-predict or under-predict the toxicity of this ''other forms'' category. EPA is also reluctant to compute any type of ''average'' from the toxicity data on ''other forms'' presented in the table above. These data are quite sparse. Moreover, they reflect only organic selenium forms, and the toxicities of other inorganic forms and compounds may be quite different.

*Equation:* Additive toxicity means that the concentrations of the different forms should be added together after adjusting for the relative toxicity of each. For a single toxicant the goal is for the concentration, c, to be less than or equal to the criterion, CMC; that is, the ratio $c/CMC \leq 1$. For additive toxicants the goal is for the sum of such ratios to be less than or equal to 1. Thus, for two forms of selenium with additive acute toxicities, the concentration of each form should be controlled such that:

$$\frac{C_1}{CMC_1} + \frac{C_2}{CMC_2} \leq 1$$

where $c_1$ is the concentration of selenite and other selenium assumed to have the toxicity of selenite, $c_2$ is the concentration and selenate and other selenium assumed to have the toxicity of selenate; and $CMC_1$ and $CMC_2$ are the CMCs for selenite and selenate respectively. A Criterion Maximum Concentration, $CMC_{Se}$, for the combined additive forms of selenium can then be calculated from the following equation, which is derived from the previous one:

$$CMC_{Se} = \frac{1}{\frac{f_1}{CMC_1} + \frac{f_2}{CMC_2}}$$

where $f_1$ and $f_2$ are the fractions of total selenium that are treated as selenite and selenate respectively (that is, $f_1=c_1/c_{Se}$ and $c_{Se}=c_1+c_2$), and $f_1+f_2=1$.

The above equations, when coupled with the assumption that half of the other selenium (including organoselenium) has the toxicity of selenite and half has the toxicity of selenate, behave as follows. If the concentrations of selenite and other selenium are zero ($c_1=0$) then the Criterion Maximum Concentration ($CMC_{Se}$) would be calculated to be 12.82 µg/l, the CMC of selenate. On the other hand, if the concentrations of selenate and other selenium are zero, then $CMC_{Se}$ would be calculated to be 185.9 µg/l, the CMC of selenite. In determining compliance with this criterion, EPA expects that monitoring to determine speciation will be necessary.

EPA is requesting comment on the data and approach for deriving the proposed CMC for selenium applicable to California in this rulemaking. Specifically, EPA is requesting comment on the scientific basis for establishing the additivity of the toxicities of the various forms of selenium (selenate, selenite, and other selenium compounds). EPA also requests comments on the procedure used to account for the additivity of the various forms of selenium in the criterion derivation algorithm. If persons have filed comments on the November 1996 notice, cited above, that they wish to submit for this rulemaking, they should submit them as described above.

c. Dissolved Metals Criteria

In December of 1992, in the NTR, EPA promulgated water quality criteria for several states that had failed to meet the requirements of CWA section 303(c)(2)(B). Included among the water quality criteria promulgated were numeric criteria for the protection of aquatic life for 11 metals: arsenic,

cadmium, chromium (III), chromium (VI), copper, lead, mercury, nickel, selenium, silver and zinc. Criteria for two metals applied to the State of California: chromium III and selenium.

The Agency received extensive public comment during the development of the NTR regarding the most appropriate approach for expressing the metals criteria. The principal issue was the correlation between metals that are measured and metals that are bioavailable and toxic to aquatic life.

At the time of the NTR promulgation, Agency policy was to express metals criteria, as recommended in the section 304(a) criteria guidance documents, as total recoverable metal measurements. Agency guidance prior to the NTR promulgation indicated that metals criteria may be expressed either as total recoverable metal or dissolved metal. See *Interim Guidance on Interpretation and Implementation of Aquatic Life Criteria for Metals,* U.S. EPA, May 1992 (notice of availability published at 57 FR 4041, June 5, 1992). Since the NTR covered a substantial number of water bodies of varying water quality, EPA selected what it considered a simple, conservative approach to implement the metals criteria, namely, the total recoverable method.

EPA continued to work with the states and other interested parties on the issue of metals bioavailability and toxicity. EPA held a workshop of invited experts on the issue and as a result of the consultations, the Agency issued a policy memorandum on October 1, 1993, entitled, Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria (the Metals Policy). The Metals Policy states:

> It is now the policy of the Office of Water that the use of dissolved metal to set and measure compliance with water quality standards is the recommended approach, because dissolved metal more closely approximates the bioavailable fraction of the metal in the water column than does total recoverable metal.

It further states:

> Until the scientific uncertainties are better resolved, a range of different risk management decisions can be justified. EPA recommends that State water quality standards be based on dissolved metal. EPA will also approve a State risk management decision to adopt standards based on total recoverable metal, if those standards are otherwise approvable as a matter of law.

The adoption of the Metals Policy did not change EPA's position that the existing total recoverable criteria published under section 304(a) of the CWA were scientifically defensible. EPA believed, and continues to believe, that when a state develops and adopts its standards, the state, in making its risk management decision, may want to consider sediment, food chain effects, and other fate-related issues and decide to adopt total recoverable or dissolved metals criteria.

In 1993, a number of parties brought lawsuits challenging the NTR metals criteria. See *American Forest and Paper Ass'n, Inc. et al.* v. *U.S. EPA* (Consolidated Case No. 93–0694 (RMU), D.D.C.). The plaintiffs in those lawsuits wanted the permitting authorities in the NTR states to use criteria based on dissolved metal rather than total recoverable metal. After careful consideration, EPA concluded that it was in the public interest to revise the metals criteria promulgated in the NTR to reflect the Office of Water's new metals policy. On February 15, 1995, EPA and the plaintiffs filed a partial settlement agreement with the Court. Pursuant to the terms of the agreement, EPA agreed to issue an administrative stay of the numeric aquatic life water quality criteria (expressed as total recoverable metal) for: arsenic; cadmium, chromium (III); chromium (VI); copper; lead, mercury (acute only), nickel, selenium (saltwater only), silver, and zinc. The stay was effective April 14, 1995 (60 FR 22228, May 4, 1995), and was only intended to be in effect until EPA took action to amend the NTR by promulgating new metals criteria based on dissolved metal. EPA published an interim final amendment to the NTR effective April 15, 1995; this amendment promulgated new metals criteria for the metals listed in the stay (60 FR 22229, May 4, 1995).

The numeric criteria in the NTR, as amended, reflect the Office of Water's current policy with respect to metals. The 1995 NTR amendment promulgated dissolved metals criteria as substitutes for the total recoverable metals criteria subject to the EPA's administrative stay. The NTR promulgated freshwater chromium (III) criteria and freshwater selenium criteria for the State of California. However, since the amendments did not change the freshwater selenium criteria, only California's chromium (III) criteria were changed to the dissolved form through the NTR, as amended.

Since EPA's previous criteria guidance had been expressed as total recoverable metal, to express the criteria as dissolved, conversion factors were developed to account for the possible presence of particulate metal in the laboratory toxicity tests used to develop the total recoverable criteria. Initially, EPA included a set of recommended freshwater conversion factors with the Metals Policy. Based on additional laboratory evaluations that simulated the original toxicity tests, EPA refined the procedures used to develop freshwater conversion factors for aquatic life criteria. These new conversion factors were made available for public review and comment in the amendments to the NTR on May 4, 1995, at 60 FR 22229.

EPA also conducted saltwater laboratory simulation tests for the development of conversion factors for saltwater metals criteria. The saltwater tests results were first available in the amendments to the NTR on May 4, 1995. The conversion factors in this proposed rule and other technical reports are the same as those referenced in the May 4, 1995 amendments to the NTR and supersede the conversion factors in Attachment 2 of the Metals Policy.

*Freshwater Criteria Conversion Factors:* The freshwater conversion factors contained in today's proposed rule are contained in the *Derivation of Conversion Factors for the Calculation of Dissolved Freshwater Aquatic Life Criteria for Metals,* U.S. EPA, 1995, available in the administrative record for this rulemaking. This study did not include laboratory simulation tests for mercury or silver; therefore, the freshwater conversion factors for mercury and silver used today are from the Metals Policy, also in the record for this rule. These conversion factors are presented in 40 CFR 131.38(b)(2) of today's proposed rule.

The conversion factors for most freshwater metals were established as constant values. For cadmium and lead however, EPA found that water hardness mediated the conversion factor and should be taken into account when converting total recoverable cadmium and lead criteria to dissolved. 40 CFR 131.38(b)(2) of today's proposed rule presents the hardness-dependent conversion factors for cadmium and lead.

*Saltwater Criteria Conversion Factors:* Acute saltwater conversion factors were first promulgated in the amendments to the NTR, and are again being proposed in this rule. The data and the acute criteria conversion factors for salt water are contained in the *Derivation of Conversion Factors for the Calculation of Dissolved Saltwater Aquatic Life Criteria for Metals,* U.S. EPA, 1995. This summary report and its supporting data are available in the administrative record. Saltwater chronic conversion factors have not been developed separately and therefore are not available in today's proposed rule. Based on close similarities between the

freshwater acute and chronic conversion factors, EPA believes that, if calculated, the chronic saltwater conversion factors would be nearly the same as the acute saltwater factors. In the absence of these chronic conversion factors, the saltwater acute conversion factors would apply. Salt water simulation tests were not completed for mercury or silver, therefore, the conversion factors from the Metals Policy continue to apply. The saltwater conversion factors are presented in 40 CFR 131.38(b)(2) of today's proposed rule.

*Calculation of Dissolved Metals Criteria:* Metals criteria values in today's proposed rule in the matrix at 131.38(b)(1) are shown as dissolved metal. These criteria have been calculated in one of two ways. For freshwater metals criteria that are hardness-dependent, the dissolved metal criteria value is calculated separately for each hardness using the table at proposed 40 CFR 131.38(b)(2). The hardness-dependent freshwater values presented in the matrix at proposed 40 CFR 131.38(b)(1) have been calculated using a hardness of 100 mg/l as $CaCO_3$ for illustrative purposes only. Saltwater and freshwater metals criteria that are not hardness-dependent are calculated by taking the total recoverable criteria values (from EPA's national section 304(a) criteria guidance documents, as updated as described in section a. above) before rounding, and multiplying them by the appropriate conversion factors. The final dissolved metals criteria values, as they appear in the matrix at proposed 40 CFR 131.38(b)(1), are rounded to two significant figures.

*Translators for Dissolved to Total Recoverable Metals Limits:* EPA's National Pollutant Discharge Elimination System (NPDES) regulations require that limits for metals in permits be stated as total recoverable in most cases (see 40 CFR 122.45(c)) except when an effluent guideline specifies the limitation in another form of the metal, the approved analytical methods measure only dissolved metal, or the permit writer expresses a metal's limit in another form (e.g., dissolved, specific valence, or total) when required to carry out provisions of the CWA. This is because the chemical conditions in ambient waters frequently differ substantially from those in the effluent and there is no assurance that effluent particulate metals would not dissolve after discharge. The NPDES permit regulations do not require that water quality standards be expressed as total recoverable; rather, the regulations require permit writers to develop permit limits that are expressed in terms of metals concentrations and loadings that are measured using the total recoverable method. Expressing criteria as dissolved metal requires translation between different metal forms in the calculation of the permit limit so that a total recoverable permit limit can be established that will achieve water quality standards. Thus, it is important that permitting authorities and other authorities have the ability to translate between dissolved metal in ambient waters and total recoverable metal in effluent.

EPA has completed guidance on the use of translators to convert from dissolved metals criteria to total recoverable permit limits. The document, *The Metals Translator: Guidance for Calculating a Total Recoverable Permit Limit From a Dissolved Criterion* (EPA 823–B–96–007, June 1996), is included in the administrative record for today's proposed rule. This technical guidance examines how to develop a metals translator which is defined as the fraction of total recoverable metal in the downstream water that is dissolved, i.e., the dissolved metal concentration divided by the total recoverable metal concentration. A translator may take one of three forms: (1) It may be assumed to be equivalent to the criteria guidance conversion factors; (2) it may be developed directly as the ratio of dissolved to total recoverable metal; and (3) it may be developed through the use of a partition coefficient that is functionally related to the number of metal binding sites on the adsorbent in the water column (e.g., concentrations of total suspended solids or TSS). This guidance document discusses these three forms of translators, as well as field study designs, data generation and analysis, and site-specific study plans to generate site-specific translators.

California Regional Water Quality Control Boards may use any of these methods in developing water quality-based permit limits to meet dissolved metals criteria. EPA encourages the State to adopt a statewide policy on the use of translators so that the most appropriate method or methods are used consistently within California.

d. Application of Metals Criteria

In selecting an approach for implementing the metals criteria, the principal issue is the correlation between metals that are measured and metals that are biologically available and toxic. In order to assure that the metals criteria are appropriate for the chemical conditions under which they are applied, EPA is providing for the adjustment of the criteria through application of the ''water-effect ratio'' procedure. EPA notes that performing the testing to use a site-specific water-effect ratio is optional on the part of the State.

In the NTR, as amended, EPA identified the water-effect ratio (WER) procedure as a method for optional site-specific criteria development for certain metals. The WER approach compares bioavailability and toxicity of a specific pollutant in receiving waters and in laboratory waters. A WER is an appropriate measure of the toxicity of a material obtained in a site water divided by the same measure of the toxicity of the same material obtained simultaneously in a laboratory dilution water.

On February 22, 1994, EPA issued *Interim Guidance on the Determination and Use of the Water-Effect Ratios for Metals* (EPA 823–B–94–001) now incorporated into the updated *Second Edition of the Water Quality Standards Handbook*, Appendix L. In accordance with the WER guidance and where application of the WER is deemed appropriate, EPA strongly encourages the application of the WER on a watershed or water body basis in California as opposed to application on a discharger-by-discharger basis. This approach is technically sound, an efficient use of resources, and allowable for NPDES permitting authorities.

The rule proposes that a default WER value of 1.0 will be assumed, if no site-specific WER will be determined. To use a WER other than the default of 1.0, the rule proposes that the WER must be determined as set forth in EPA's WER guidance or determined by another scientifically defensible method that has been adopted by the State as part of its water quality standards program and approved by EPA.

The WER is a more comprehensive mechanism for addressing bioavailability issues than simply expressing the criteria in terms of dissolved metal. Consequently, expressing the criteria in terms of dissolved metal, as done in today's proposed rule for California, does not completely eliminate the utility of the WER. This is particularly true for copper, a metal that forms reduced-toxicity complexes with dissolved organic matter.

The *Interim Guidance on Determination and Use of Water-Effect Ratios for Metals* explains the relationship between WERs for dissolved criteria and WERs for total recoverable criteria. Dissolved measurements are to be used in the site-specific toxicity testing underlying the WERs for dissolved criteria. Because

WERs for dissolved criteria generally are little affected by elevated particulate concentrations, EPA expects those WERs to be somewhat less than WERs for total recoverable criteria in such situations. Nevertheless, after the site-specific ratio of dissolved to total metal has been taken into account, EPA expects a permit limit derived using a WER for a dissolved criterion to be similar to the permit limit that would be derived from the WER for the corresponding total recoverable criterion.

e. Saltwater Copper Criteria

The saltwater copper criteria for aquatic life in today's proposed rule are 4.8 µg/l (CMC) and 3.1 µg/l (CCC) in the dissolved form. New data including data collected from studies for the New York/New Jersey Harbor and the San Francisco Bay indicated a need to revise the copper criteria document to reflect a change in the saltwater CMC and CCC aquatic life values. EPA conducted a comprehensive literature search and added toxicity test data for seven new species to the database for the saltwater copper criteria. EPA believes these new data have national implications and the national criteria guidance now contain a CMC of 4.8 µg/l dissolved and a CCC of 3.1 µg/l dissolved. In the amendments to the NTR, EPA noticed the availability of data to support these changes to the NTR, and solicited comments. The data can be found in the draft document entitled, *Ambient Water Quality Criteria—Copper, Addendum 1995*. This document is available from the Office of Water Resource Center and is available for review in the administrative record for this proposed rule. EPA is now requesting comments on these revised criteria as applied to the State of California. Commenters who wish to refer to their comments on the Notice of Availability must resubmit a copy of their previous comments.

f. Chronic Averaging Period

In establishing water quality criteria, EPA generally recommends an ''averaging period'' which reflects the duration of exposure required to elicit effects in individual organisms (TSD, Appendix D–2.) The CCC is intended to be the highest concentration that could be maintained indefinitely in a water body without causing an unacceptable effect on the aquatic community or its uses. (TSD, Appendix D–1). As aquatic organisms do not generally experience steady exposure, but rather fluctuating exposures to pollutants, and because aquatic organisms can generally tolerate higher concentrations of pollutants over a shorter periods of time, EPA expects that the concentration of a pollutant can exceed the CCC without causing an unacceptable effect if (a) the magnitude and duration of exceedences are appropriately limited and (b) there are compensating periods of time during which the concentration is below the CCC. This is done by specifying a duration of an ''averaging period'' over which the average concentration should not exceed the CCC more often than specified by the frequency (TSD, Appendix D–1).

EPA is proposing a 4-day averaging period for chronic criteria, which means that measured or predicted ambient pollutant concentrations should be averaged over a 4-day period to determine attainment of chronic criteria. EPA acknowledges that the State may develop and adopt an averaging period that differs from EPA's recommendation, so long as it is scientifically supportable.

The most important consideration for setting an appropriate averaging period is the length of time that sensitive organisms can tolerate exposure to a pollutant at levels exceeding a criterion without showing adverse effects on survival, growth, or reproduction. EPA believes that the chronic averaging period must be shorter than the duration of the chronic tests on which the CCC is based, since, in some cases, effects are elicited before exposure of the entire duration. Most of the toxicity tests used to establish the chronic criteria are conducted using steady exposure to toxicants for a least 28 days. (TSD, page 35). Some chronic tests, however, are much shorter than this (TSD, Appendix D–2). EPA selected the 4-day averaging period based on the shortest duration in which chronic test effects are sometimes observed for certain species and toxicants. In addition, EPA believes that the results of some chronic tests are due to an acute effect on a sensitive life stage that occurs some time during the test, rather than being caused by long-term stress or long-term accumulation of the test material in the organisms.

Additional discussion of the rationale for the 4-day averaging period is contained in Appendix D of the TSD. Balancing all of the above factors and data, EPA believes that the 4-day averaging period falls within the scientifically reasonable range of values for choice of the averaging period, and is an appropriate length of time of pollutant exposure to ensure protection of sensitive organisms.

EPA established a 4-day averaging period in the NTR. In settlement of litigation on the NTR, EPA stated that it was ''in the midst of conducting, sponsoring, or planning research related to the basis for and application of'' water quality criteria and mentioned the issue of averaging period. See Partial Settlement Agreement in *American Forest and Paper Ass'n, Inc. et al.* v. *U.S. EPA* (Consolidated Case No. 93–0694 (RMU), D.D.C.). EPA is re-evaluating issues raised about averaging periods and will, if appropriate, revise the 1985 Guidelines.

EPA received public comment relevant to the averaging period during the comment period for the 1995 Amendments to the NTR (40 CFR 22228, May 4, 1995), although these public comments did not address the chronic averaging period separately from the allowable excursion frequency and the design flow. These commenters argued that a once-in-3-year excursion frequency for 4-day average concentrations, or a 7Q10 design flow, was unnecessarily restrictive. For chronic criteria, they noted that EPA has approved the use of a 30Q3 design flow in Colorado, a 30Q5 design flow in Maryland, and a 1 percent exceedance frequency in Pennsylvania. Comments recommended that EPA use the 30Q5 design flow for chronic criteria.

While EPA is undertaking analysis of the chronic design conditions as part of the revisions to the 1985 Guidelines, EPA has not yet completed this work. Until this work is complete, for the reasons set forth in the TSD, EPA continues to believe that the 4-day chronic averaging period represents a reasonable, defensible value for this parameter.

g. Hardness

Freshwater aquatic life criteria for certain metals are expressed as a function of hardness because hardness and/or water quality characteristics that are usually correlated with hardness can reduce or increase the toxicities of some metals. Hardness is used as a surrogate for a number of water quality characteristics which affect the toxicity of metals in a variety of ways. Increasing hardness has the effect of decreasing the toxicity of metals. Water quality criteria to protect aquatic life may be calculated at different concentrations of hardnesses measured in mg/l as $CaCO_3$.

Section 131.38(b)(2) of the proposed rule presents the hardness-dependent equations for freshwater metals criteria. For example, using the equation for zinc, the total recoverable CMCs at a hardness of 10, 50, 100 or 200 mg/l as $CaCO_3$ are 17, 67, 120 and 220 µg/l, respectively. Thus, the specific value in the table in the proposed regulatory text is for illustrative purposes only. Most of the data used to develop these hardness equations for deriving aquatic life

criteria for metals were in the range of 25 mg/l to 400 mg/l as $CaCO_3$, and the formulas are therefore most accurate in this range. The majority of surface waters nationwide and in California have a hardness of less than 400 mg/l as $CaCO_3$.

In the past, EPA generally recommended that 25 mg/l as $CaCO_3$ be used as a default hardness value in deriving freshwater aquatic life criteria for metals when the ambient (or actual) hardness value is below 25 mg/l as $CaCO_3$. However, use of the approach results in criteria that may not be fully protective. Therefore, for waters with a hardness of less than 25 mg/l as $CaCO_3$, criteria should be calculated using the actual ambient hardness of the surface water.

In the past, EPA generally recommended that if the hardness was over 400 mg/l, two options were available: (1) Calculate the criterion using a default WER of 1.0 and using a hardness of 400 mg/l in the hardness equation; or (2) calculate the criterion using a WER and the actual ambient hardness of the surface water in the equation. Use of the second option is expected to result in the level of protection intended in the 1985 Guidelines whereas use of the first option is thought to result in a lower aquatic life criterion. At high hardness there is an indication that hardness and related inorganic water quality characteristics do not have as much of an effect on toxicity of metals as they do at lower hardnesses. Related water quality characteristics do not correlate as well at higher hardnesses as they do at lower hardnesses. Therefore, if hardness is over 400 mg/l as $CaCO_3$, a hardness of 400 mg/l as $CaCO_3$ should be used with a default WER of 1.0; alternatively, the WER and actual hardness of the surface water may be used.

EPA requested comments in the NTR amendments on the use of actual ambient hardness for calculating criteria when the hardness is below 25 mg/l as $CaCO_3$, and when hardness is greater than 400 mg/l as $CaCO_3$. Most of the comments received were in favor of using the actual hardness with the use of the water-effect ratio (1.0 unless otherwise specified by the permitting authority) when the hardness is greater than 400 mg/l as $CaCO_3$. A few commenters did not want the water-effect ratio to be mandatory in calculating hardness, and other commenters had concerns about being responsible for deriving an appropriate water-effect ratio. Overall, the commenters were in favor of using the actual hardness when calculating hardness-dependent freshwater metals criteria for hardness between 0–400 mg/l as $CaCO_3$. EPA took those comments into account in proposing today's proposed rule.

A hardness equation is most accurate when the relationships between hardness and the other important inorganic constituents, notably alkalinity and pH, are nearly identical in all of the dilution waters used in the toxicity tests and in the surface waters to which the equation is to be applied. If an effluent raises hardness but not alkalinity and/or pH, using the hardness of the downstream water might provide a lower level of protection than intended by the 1985 guidelines. If it appears that an effluent causes hardness to be inconsistent with alkalinity and/or pH, the intended level of protection will usually be maintained or exceeded if either (1) data are available to demonstrate that alkalinity and/or pH do not affect the toxicity of the metal, or (2) the hardness used in the hardness equation is the hardness of upstream water that does not contain the effluent. The level of protection intended by the 1985 guidelines can also be provided by using the WER procedure.

In some cases, capping hardness at 400 mg/l might result in a level of protection that is higher than that intended by the 1985 guidelines, but any such increase in the level of protection can be overcome by use of the WER procedure.

For metals whose criteria are expressed as hardness equations, use of the WER procedure will generally be intended to account for effects of such water quality characteristics as total organic carbon on the toxicities of metals. The WER procedure is equally useful for accounting for any deviation from a hardness equation in a site water.

*3. Human Health Criteria*

EPA's CWA section 304(a) human health criteria guidance provides criteria recommendations to minimize adverse human effects due to substances in ambient water. EPA's CWA section 304(a) criteria guidance for human health are based on two types of biological endpoints: (1) Carcinogenicity and (2) systemic toxicity (i.e., all other adverse effects other than cancer). Thus, there are two procedures for assessing these health effects: one for carcinogens and one for non-carcinogens.

EPA's human health guidelines assume that carcinogenicity is a ''non-threshold phenomenon,'' that is, there are no ''safe'' or ''no-effect levels'' because even extremely small doses are assumed to cause a finite increase in the incidence of the effect (i.e., cancer). Therefore, EPA's water quality criteria guidance for carcinogens are presented as pollutant concentrations corresponding to increases in the risk of developing cancer. See Human Health Guidelines at 45 FR 79347.

For pollutants that do not manifest any apparent carcinogenic effect in animal studies (i.e., systemic toxicants), EPA assumes that the pollutant has a threshold below which no effect will be observed. This assumption is based on the premise that a physiological mechanism exists within living organisms to avoid or overcome the adverse effect of the pollutant below the threshold concentration.

The human health risks of a substance cannot be determined with any degree of confidence unless dose-response relationships are quantified. Therefore, a dose-response assessment is required before a criterion can be calculated. The dose-response assessment determines the quantitative relationships between the amount of exposure to a substance and the onset of toxic injury or disease. Data for determining dose-response relationships are typically derived from animal studies, or less frequently, from epidemiological studies in exposed populations.

The dose-response information needed for carcinogens is an estimate of the carcinogenic potency of the compound. Carcinogenic potency is defined here as a general term for a chemical's human cancer-causing potential. This term is often used loosely to refer to the more specific carcinogenic or cancer slope factor which is defined as an estimate of carcinogenic potency derived from animal studies or epidemiological data of human exposure. It is based on extrapolation from test exposures of high doses over relatively short periods of time to more realistic low doses over a lifetime exposure period by use of linear extrapolation models. The cancer slope factor, q1*, is EPA's estimate of carcinogenic potency and is intended to be a conservative upper bound estimate (e.g. 95% upper bound confidence limit).

For non-carcinogens, EPA uses the reference dose (RfD) as the dose response parameter in calculating the criteria. For non-carcinogens, oral RfD assessments (hereinafter simply ''RfDs'') are developed based on pollutant concentrations that cause threshold effects. The RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a lifetime. See Human Health

Guidelines. The RfD was formerly referred to as an ''Acceptable Daily Intake'' or ADI. The RfD is useful as a reference point for gauging the potential effect of other doses. Doses that are less than the RfD are not likely to be associated with any health risks, and are therefore less likely to be of regulatory concern. As the frequency of exposures exceeding the RfD increases and as the size of the excess increases, the probability increases that adverse effect may be observed in a human population. Nonetheless, a clear conclusion cannot be categorically drawn that all doses below the RfD are ''acceptable'' and that all doses in excess of the RfD are ''unacceptable.'' In extrapolating non-carcinogen animal test data to humans to derive an RfD, EPA divides a no-observed-effect dose observed in animal studies by an ''uncertainty factor'' which is based on professional judgment of toxicologists and typically ranges from 10 to 10,000.

For CWA section 304(a) human health criteria development, EPA typically considers only exposures to a pollutant that occur through the ingestion of water and contaminated fish and shellfish. Thus, the criteria are based on an assessment of risks related to the surface water exposure route only where designated uses are drinking water and fish and shellfish consumption.

The assumed exposure pathways in calculating the criteria are the consumption of 2 liters per day of water at the criteria concentration and the consumption of 6.5 grams per day of fish and shellfish contaminated at a level equal to the criteria concentration but multiplied by a ''bioconcentration factor.'' The use of fish and shellfish consumption as an exposure factor requires the quantification of pollutant residues in the edible portions of the ingested species.

Bioconcentration factors (BCFs) are used to relate pollutant residues in aquatic organisms to the pollutant concentration in ambient waters. BCFs are quantified by various procedures depending on the lipid solubility of the pollutant. For lipid soluble pollutants, the average BCF is calculated from the weighted average percent lipids in the edible portions of fish and shellfish, which is about 3%; or it is calculated from theoretical considerations using the octanol/water partition coefficient. For non-lipid soluble compounds, the BCF is determined empirically. The assumed water consumption is taken from the National Academy of Sciences publication *Drinking Water and Health* (1977). (Referenced in the Human Health Guidelines.) This value is appropriate as it includes a margin of safety so that the general population is protected. See also EPA's discussion of the 2.0 liters/day assumption at 61 FR 65183 (Dec. 11, 1996). The 6.5 grams per day contaminated fish and shellfish consumption value was equivalent to the average per-capita consumption rate of all (contaminated and non-contaminated) freshwater and estuarine fish and shellfish for the U.S. population. See Human Health Guidelines.

EPA assumes in calculating water quality criteria that the exposed individual is an average adult with body weight of 70 kilograms. The issue of concern is dose per kilogram of body weight. EPA assumes 6.5 grams per day of contaminated fish and shellfish consumption and 2.0 liters per day of contaminated drinking water consumption for a 70 kilogram person in calculating the criteria. Persons of smaller body weight are expected to ingest less contaminated fish and shellfish and water, so the dose per kilogram of body weight is generally expected to be roughly comparable.

There may be subpopulations within a state, such as subsistence anglers who as a result of greater exposure to a contaminant, are at greater risk than the hypothetical 70 kilogram person eating 6.5 grams per day of maximally contaminated fish and shellfish and drinking 2.0 liters per day of maximally contaminated drinking water. For example, individuals that ingest ten times more of a carcinogenic pollutant than is assumed in derivation of the criteria at a $10^{-6}$ risk level will be protected to a $10^{-5}$ level, which EPA has historically considered to be adequately protective. There may, nevertheless, be circumstances where site-specific numeric criteria that are more stringent than the statewide criteria are necessary to adequately protect highly exposed subpopulations. Although EPA intends to focus on promulgation of appropriate statewide criteria that will reduce risks to all exposed individuals, including highly exposed subpopulations, site-specific criteria may be developed subsequently by the State where warranted to provide necessary additional protection. See Human Health Guidelines, Issue 8.

EPA has a process to develop a scientific consensus on oral reference dose assessments and carcinogenicity assessments (hereinafter simply cancer slope factors or slope factors or q1*s). Through this process, EPA develops a consensus of Agency opinion which is then used throughout EPA in risk management decision-making. EPA maintains an electronic data base which contains the official Agency consensus for oral RfD assessments and carcinogenicity assessments which is known as the Integrated Risk Information System (IRIS). It is available for use by the public on the National Institutes of Health's National Library of Medicine's TOXNET system, and through diskettes from the National Technical Information Service (NTIS). (NTIS access number is PB 90–591330.)

Section 304(a)(1) of the CWA requires EPA to periodically revise its criteria guidance to reflect the latest scientific knowledge: ''(A) on the kind and extent of all identifiable effects on health and welfare * * *; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on the biological community diversity, productivity, and stability, including information on the factors affecting eutrophication rates of organic and inorganic sedimentation for varying types of receiving waters.'' In developing up-to-date water quality criteria for the protection of human health, EPA consistently relies upon the most recent IRIS values (RfDs and q1*s) as the toxicological basis in the criterion calculation. IRIS reflects EPA's most current consensus on the toxicological assessment for a chemical. In developing the criteria in today's proposed rule, the most recent IRIS values were used together with currently accepted exposure parameters for bioconcentration, fish and shellfish and water consumption, and body weight. The IRIS cover sheet for each pollutant criteria included in today's proposed rule is contained in the administrative record.

For the human health criteria included in today's proposed rule, EPA used the Human Health Guidelines on which criteria recommendations from the appropriate CWA section 304(a) criteria guidance document were based. (These documents are also placed in the administrative record for today's proposed rule.) Where EPA has changed any parameters in IRIS used in criteria derivation since issuance of the criteria guidance document, EPA recalculated the criteria recommendation with the latest IRIS information. Thus, there are differences between the original criteria guidance document recommendations, and those in this proposed rule, but this proposed rule presents EPA's most current CWA section 304(a) criteria recommendation. The basis (q1* or RfD/ADI) and BCF for each pollutant criterion in today's proposed rule is contained in the rule's Administrative Record Matrix which is included in the administrative record for the proposed

rule. In addition, all recalculated human health numbers are denoted by an ''a'' in the criteria matrix in 40 CFR 131.38(b)(1) of the proposed rule. The pollutants for which a revised human health criterion has been calculated since the December 1992 NTR include: mercury; dichlorobromomethane; 1,2-dichloropropane; 1,2-trans-dichloroethylene; 2,4-dimethylphenol; acenaphthene; benzo(a)anthracene; benzo(a)pyrene; benzo(b)flouranthene; benzo(k)flouranthene; 2-chloronaphthalene; chrysene; dibenzo(a,h)anthracene; indeno(1,2,3-cd)pyrene; N-nitrosodi-n-propylamine; alpha-endosulfan; beta-endosulfan; endosulfan sulfate; 2-chlorophenol; butylbenzyl phthalate; and polychlorinated biphenyls.

In November of 1991, the proposed NTR presented criteria for several pollutants in parentheses. These were pollutants for which, in 1980, insufficient information existed to develop human health water quality criteria, but for which, in 1991, sufficient information existed. Since these criteria did not undergo the public review and comment in a manner similar to the other water quality criteria presented in the NTR (for which sufficient information was available in 1980 to develop a criterion, as presented in the 1980 criteria guidance documents), they were not proposed for adoption into the water quality criteria, but were presented to serve as notice for inclusion in future state triennial reviews. Today's rule proposes criteria for these nine pollutants: copper; 1, 2-dichloropropane; 1,2-trans-dichloroethylene; 2,4-dimethylphenol; acenaphthene; 2-chloronaphthalene; N-nitrosodi-n-propylamine; 2-chlorophenol; butylbenzene phthalate. All the criteria are based on IRIS values—either an RfD or q1*—which were listed on IRIS as of November 1991, the date of the proposed NTR. These values have not changed since the final NTR was published in December of 1992. The rule's Administrative Record Matrix in the administrative record of today's proposed rule contains the specific RfDs, q1*s, and BCFs used in calculating these criteria.

*Potential Changes to the Human Health Criteria Methodology:* EPA expects to propose in the near future several changes to the 1980 ambient water quality criteria derivation guidelines (the Human Health Guidelines). The methodology revisions anticipated reflect significant scientific advances that have occurred during the past several years in such key areas as cancer and noncancer risk assessments, exposure assessments and bioaccumulation. Some anticipated areas of major change, which are being considered in this process include:

1. The new Proposed Guidelines on Carcinogen Risk Assessment emphasize the consideration of mode of action and route of exposure. A weight of evidence narrative will be used instead of the traditional alphanumeric classification (e.g., A, B, C, D, E carcinogens). For dose response assessments, two steps will be involved: determining the range of observation (observed effect) and the range of extrapolation. To characterize the cancer potency, a biologically-based chemical-specific model will be used. In many cases, however, sufficient data may not exist to apply a biological based model. In these cases, linear and nonlinear defaults will be used. A linear default will be used for those chemicals which indicate they are DNA reactive or when other evidence supports linearity. In addition, if a chemical is not DNA reactive but insufficient data exist to characterize a nonlinear mode of action, linearity will be assumed and a linear default will be recommended. The nonlinear default (margin of exposure approach) will be used for those chemicals which are not DNA reactive and for those for which sufficient data to characterize a nonlinear mode of action exist.

2. For noncarcinogens, the concept of an expressing an RfD as a range rather than a single value will be presented for comment. In developing water quality criteria, EPA will provide a default RfD which, in most cases, will be the midpoint of the range, commonly referred to as the point estimate. Alternative approaches, such as the benchmark dose and categorical regression analysis may be employed in developing an RfD and analyzing the risk above the RfD point estimate.

3. Default fish and shellfish consumption values are presented for the general population, for sportfishers, and for subsistence fishers, replacing the single value of 6.5 grams/day used in the 1980 guidance. States may use a fish and shellfish intake level derived from local data on fish and shellfish consumption in place of the default values provided. However, the fish and shellfish intake level chosen must be protective of highly exposed individuals in the population.

4. All criteria should be derived using a bioaccumulation factor (BAF); none should be derived using a bioconcentration factor (BCF), which was used in the 1980 guidance.

5. As an alternative to expressing ambient water quality criteria as a water concentration, criteria may also be expressed in terms of fish tissue concentration. For some substances, particularly those that are expected to exhibit substantial bioaccumulation, the ambient water quality criteria derived may have extremely low values, possibly below the practical limits for detecting and quantifying the substance in the water column. It may be more practical and meaningful in these cases to focus on the concentration of those substances in fish tissue, since fish ingestion would be the predominant source of exposure for these substances that bioaccumulate.

6. When deriving ambient water quality criteria for noncarcinogens and nonlinear carcinogens, a factor (referred to as the relative source contribution) should be included to account for other non-water exposure sources so that the entire RfD will not be not allocated to drinking water and fish consumption alone.

For more details on these changes and others, please refer to the upcoming **Federal Register** notice.

It should be noted that the changes outlined above may result in significant numeric changes in the ambient water quality criteria. For example, for those chemicals which are bioaccumulative in nature (e.g., with bioconcentration factors (BCFs) of 300 or more), bioaccumulation factors may be developed which are 1–3 orders of magnitude greater than the BCFs developed in 1980. This would result in a criterion which is 1–3 orders of magnitude more stringent, if all other parameters (such as RfDs and q1*s) remain roughly unchanged.

EPA will continue to rely on existing criteria as the basis for regulatory and non-regulatory decisions, until EPA revises and reissues a 304(a) criteria guidance using the revised final human health criterion methodology. The existing criteria are still viewed as scientifically acceptable by EPA. The intention of the methodology revisions is to present the latest scientific advancements in the areas of risk and exposure assessment in order to incrementally improve the already sound toxicological and exposure bases for these criteria. As EPA's current human health criteria are the product of several years worth of development, it is reasonable to assume that revisiting all existing criteria could require comparable amounts of time and resources. Given these circumstances, EPA is proposing a process for revisiting these criteria as part of the overall revisions to the methodology for deriving human health criteria that is expected to be published in the **Federal Register** in 1997.

The State of California in its Ocean Plan, adopted in 1990 and approved by EPA in 1991, established numerical water quality criteria using an average fish and shellfish consumption rate of 23 grams per day. This value is based on an earlier California Department of Health Services estimate. The State is currently in the process of readopting its water quality control plans for inland surface waters, enclosed bays, and estuaries. The State intends to consider information on fish and shellfish consumption rates evaluated and summarized in a recent report prepared by the State's Office of Environmental Health Hazard Assessment. The report, which is undergoing final evaluation, is expected to be made public in 1997. EPA supports the State's use of any appropriate higher state-specific fish and shellfish consumption rates in its readoption of criteria in its statewide plans.

a. 2,3,7,8–TCDD (Dioxin) Criteria

In today's action, EPA is proposing human health water quality criteria for 2,3,7,8-tetrachlorodibenzo-p-dioxin (''dioxin'') at the same levels as promulgated in the NTR, as amended. These criteria are derived from EPA's 1984 CWA section 304(a) criteria guidance document for dioxin.

EPA has been evaluating the health threat posed by dioxin nearly continuously for well over a decade. Following issuance of the 1984 criteria guidance document, evaluating the health effects of dioxin and recommending human health criteria for dioxin, EPA prepared draft reassessments reviewing new scientific information relating to dioxin in 1985 and 1988. EPA's Science Advisory Board (SAB), reviewing the 1988 draft reassessment, concluded that while the risk assessment approach used in 1984 criteria guidance document had inadequacies, a better alternative was unavailable (see SAB's *Dioxin Panel Review of Documents from the Office or Research and Development relating to the Risk and Exposure Assessment of 2,3,7,8–TCDD* (EPA—SAB–EC–90–003, November 28, 1989) included in the administrative record for today's proposed rule). Between 1988 and 1990, EPA issued numerous reports and guidances relating to the control of dioxin discharges from pulp and paper mills. See e.g., EPA Memorandum, ''Strategy for the Regulation of Discharges of PHDDs & PHDFs from Pulp and Paper Mills to the Waters of the United States,'' from Asst. Administrator for Water to Regional Water Mgmt Div. Directors and NPDES State Directors, dated May 21, 1990 (AR NL–16); EPA Memorandum, ''State Policies, Water Quality Standards, and Permit Limitations Related to 2,3,7,8–TCDD in Surface Water,'' from Assistant Administrators to Water Management Div. Directors, dated January 5, 1990 (AR VA–66). These documents are available in the administrative record for today's proposed rule.

In 1991, EPA's Administrator announced another scientific reassessment of the risks of exposure to dioxin (see Memorandum from Administrator William K. Reilly to Erich W. Bretthauer, Assistant Administrator for Research and Development and E. Donald Elliott, General Counsel, entitled Dioxin: Follow-Up to Briefing on Scientific Developments, April 8, 1991, included in the administrative record for today's proposed rule). At that time, the Administrator made clear that while the reassessment was underway, EPA would continue to regulate dioxin in accordance with existing Agency policy and existing risk methodologies. Thereafter, the Agency proceeded to regulate dioxin in a number of environmental programs, including standards under the Safe Drinking Water Act and the Clean Water Act.

The Administrator's promulgation of the dioxin human health criteria in the 1992 NTR affirmed his decision that the ongoing reassessment should not defer or delay regulating this potent contaminant, and further, that the risk assessment in the 1984 criteria guidance document for dioxin continued to be scientifically defensible. Until the reassessment process was completed, the Agency could not ''say with any certainty what the degree or directions of any changes in the risk estimates might be'' (57 F. R. at 60863–64).

The basis for the dioxin criteria as well as the decision to include the dioxin criteria in the 1992 NTR pending the results of the reassessment were challenged. See *American Forest and Paper Ass'n, Inc. et al.* v. *U.S. EPA* (Consolidated Case No. 93–0694 (RMU) D.D.C.). By order dated September 4, 1996, the Court upheld EPA's decision. EPA's brief and the Court's decision are included in the administrative record for today's proposed rule.

EPA has undertaken significant effort toward completion of the dioxin reassessment. On September 13, 1994, EPA released for public review and comment a draft reassessment of toxicity and exposure to dioxin. See *Health Assessment Document for 2,3,7,8-Tetrachlorobenzo-p-Dioxin (TCDD) and Related Compounds,* U.S. EPA, 1994. EPA is currently addressing comments made by the public and the SAB and anticipates that the final revised reassessment will go to the SAB in the near future. With today's proposal, the Administrator reaffirms that, notwithstanding the on-going risk reassessment, EPA intends to continue to regulate dioxin to avoid further harm to public health, and the basis for the dioxin criteria, both in terms of the cancer potency and the exposure estimates, remains scientifically defensible. The fact that EPA is reassessing the risk of dioxin, virtually a continuous process to evaluate new scientific information, does not mean that the current risk assessment is ''wrong''. It continues to be EPA's position that until the risk assessment for dioxin is revised, EPA supports and will continue to use the existing risk assessment for the regulation of dioxin in the environment. Accordingly, EPA today proposes dioxin criteria based on the 1984 criteria guidance document for dioxin and promulgated in the NTR in 1992.

*Toxicity Equivalency:* The State of California, in its 1991 water quality control plans, adopted human health criteria for dioxin and dioxin-like compounds based on the concept of toxicity equivalency (TEQ) using toxicity equivalency factors (TEFs). EPA Region 9 reviewed and approved the State's use of the TEQ concept and TEFs in setting the State's human health water quality criteria for dioxin and dioxin-like compounds.

In 1987, EPA formally embraced the TEQ concept as an interim procedure to estimate the risks associated with exposures to 210 chlorinated dibenzo-p-dioxin and chlorinated dibenzofuran (CDD/CDF) congeners, including 2,3,7,8–TCDD. This procedure uses a set of derived TEFs to convert the concentration of any CDD/CDF congener into an equivalent concentration of 2,3,7,8–TCDD. In 1989, EPA updated its TEFs based on an examination of relevant scientific evidence and a recognition of the value of international consistency. This updated information can be found in EPA's 1989 *Update to the Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-dioxins and -dibenzofurans (CDDs and CDFs)* (EPA /625/3–89/016, March 1989). EPA had been active in an international effort aimed at adopting a common set of TEFs (International TEFs/89 or I–TEFs/89), to facilitate information exchange on environmental contamination of CDD/CDF. This document reflects EPA's support of an internationally consistent set of TEFs, the I–TEFs/89.

EPA uses I–TEFs/89 in many of its regulatory programs, and encourages

their use in state programs. EPA supports and encourages the State of California's use of EPA's 1989 Interim Procedures in implementing the 2,3,7,8–TCDD water quality criteria contained in today's proposed rule. The concept of TEQ and the use of the I–TEFs/89, as outlined in EPA's 1989 Interim Procedures, provide valuable guidance in using the 2,3,7,8–TCDD water quality criteria in setting National Pollutant Discharge Elimination System (NPDES) water quality-based permit limits that are protective of human health for dioxin and dioxin-like compounds.

b. Arsenic Criteria

EPA is not proposing human health criteria for arsenic in today's proposed rule. EPA recognizes that EPA promulgated human health water quality criteria for arsenic for a number of states in 1992 based on EPA's 1980 section 304(a) criteria guidance for arsenic as updated in IRIS. However, a number of issues and uncertainties have arisen concerning the health effects of arsenic. These issues and uncertainties (summarized in ''Issues Related to Health Risk of Arsenic'' contained in the administrative record for today's proposed rule) include arsenic exposure evaluations, metabolism and detoxification processes, analytical methods, and effects at low doses. EPA has determined that these issues and uncertainties are sufficiently significant to necessitate a careful evaluation of the risks of arsenic exposure before the Agency promulgates water quality criteria for arsenic in additional states. Today's decision is consistent with the recent decision by the Assistant Administrator for Water (Memorandum from R. Perciasepe to Assistant and Regional Administrators dated February 6, 1995, also included in the administrative record) deferring the revision of the drinking water standard of 0.05 mg/l for arsenic pending, among other things, the review of the risk assessment for arsenic. This review is currently underway.

Given these circumstances, EPA has made a risk management decision not to propose human health criteria for arsenic. Permitting authorities in California should rely on existing narrative water quality criteria to establish effluent limitations as necessary for arsenic. California has previously expressed its science and policy position by establishing a criterion level of 5 μg/l for arsenic; EPA recommends that permitting authorities refer to that value in evaluating and interpreting the narrative water quality criteria.

c. Mercury Criteria

The criteria proposed here use the latest RfD in EPA's Integrated Risk Information System (IRIS) and the weighted average practical bioconcentration factor (PBCF) from the 1980 section 304(a) criteria guidance document for mercury. EPA considered the approach used in the Great Lakes Water Quality Initiative (GLI) incorporating Bioaccumulation Factors (BAFs), but rejected this approach for reasons stated below. The equation used here to derive an ambient water quality criterion for mercury from exposure to organisms and water is the following:

For organism and water consumption:

$$HHC = \frac{RfD \times BW}{WC + (FC \times PBCF)}$$

Where:

RfD = Reference Dose
BW = Body Weight
WC = Water Consumption
FC = Total Fish and Shellfish Consumption per Day
PBCF = Practical Bioconcentration Factor (weighted average)

For mercury, the most current RfD from IRIS is $1\times10^{-4}$ mg/kg/day. The RfD is derived from a benchmark dose analysis using a parts per million (ppm) maternal hair concentration as the exposure surrogate and the combination of all neurological effects in infants as the response variable from the Marsh *et. al* (1987) study. A Weibel model for extra risk was used. The resulting estimated dose at 10% extra risk was 11 ppm of maternal hair, or about $1\times10^{-3}$ mg/kg/day. An uncertainty factor of 10 was included to arrive at an RfD of $1\times10^{-4}$ mg/kg/day. This factor is composed of a half-log of 10 for within-human variability and a half log of 10 for database insufficiency, notably the lack of a two generation reproductive study.

The body weight used in the equation for the mercury criteria, as discussed in the Human Health Guidelines, is a mean adult human body weight of 70 kg. The drinking water consumption rate, as discussed in the Human Health Guidelines, is 2.0 liters per day.

The fish and shellfish consumption for mercury takes into account both average fish and shellfish consumption and average intake from each body of water. The value for the fish and shellfish consumption is based on the average total intake of fish and shellfish from fresh water, estuarine coastal and open oceans (18.7 g/day). The average individual fish and shellfish consumption from freshwater bodies is 1.72 g/day (0.00172 kg), from estuarine-coastal waters is 4.78 g/day (0.00478 kg), and from open oceans is 12.2 g/day (0.0122 kg). Species of fish and shellfish used in the calculation are those from which information was available on human consumption on average mercury concentration in edible tissue. See *Ambient Water Quality Criteria for Mercury (EPA 440/5–80–058).*

The BCF is defined as the ratio of chemical concentration in the organism to that in surrounding water. Bioconcentration occurs through uptake and retention of a substance from water only, through gill membranes or other external body surfaces. In the context of setting exposure criteria it is generally understood that the terms ''BCF'' and ''steady-state BCF'' are synonymous. A steady-state condition occurs when the organism is exposed for a sufficient length of time that the ratio does not change substantially.

The BCFs that were used herein are the ''Practical Bioconcentration Factors (PBCFs)'' that were derived in 1980: 5500 for fresh water, 3765 for estuarine coastal waters, and 9000 for open oceans. See pages C–100–1 of *Ambient Water Quality Criteria for Mercury* (EPA 440/5–80–058) for a complete discussion on the PBCF. Because of the way they were derived, these PBCFs take into account uptake from food as well as uptake from water. A weighted average PBCF was calculated to take into account the average consumption from the three waters using the following equation:

$$\text{Weighted Average Practical BCF} = \frac{\Sigma(\text{FC} \times \text{PBCF})}{\Sigma(\text{FC})}$$

$$= \frac{(0.00172)(5500) + (0.00478)(3765) + (0.0122)(9000)}{0.00172 + 0.00478 + 0.0122}$$

$$= \frac{137.3}{0.0187} = 7342.6$$

Given the large value for the weighted average PBCF, the contribution of drinking water to total daily intake is negligible so that assumptions concerning the chemical form of mercury in drinking water become less important. The human health mercury criteria proposed for this rule are based on the latest RfD as listed in IRIS and a weighted PBCF from the 1980 304(a) criteria guidance document for mercury.

On March 23, 1995 (60 FR 15366), EPA promulgated the Great Lakes Water Quality Initiative (GLI). The GLI incorporated bioaccumulation factors (BAFs) in the derivation of criteria to protect human health because it is believed BAFs are a better predictor than BCFs of the concentration of a chemical within fish tissue as it includes consideration of the uptake of contaminants from all routes of exposure. A bioaccumulation factor is defined as the ratio (in L/kg) of a substance's concentration in tissue to the concentration in the ambient water, in situations where both the organism and its food are exposed and the ratio does not change substantially over time. The final GLI establishes a hierarchy of four methods for deriving BAFs for non-polar organic chemicals: (1) Field-measured BAFs; (2) predicted BAF derived using a field-measured biota-sediment accumulation factor; (3) predicted BAFs derived by multiplying a laboratory-measured BCF by a food chain multiplier; and 4) predicted BAFs derived by multiplying a BCF calculated from the log Kow by a food-chain multiplier. The final GLI developed BAFs for trophic levels three and four fish of the Great Lakes Basin. Respectively, the BAFs for mercury for trophic level 3 and 4 fish were: 27,900 and 140,000.

The BAF promulgated in the GLI was developed specifically for the Great Lakes System. It is uncertain whether the BAFs of 27,900 and 140,000 are appropriate for use in California at this time, and thus, this proposal does not use the BAF in setting the human health criteria for mercury. To a considerable degree the magnitude of the BAF for mercury in a given system depends on how much of the total mercury in that system is present in the methylated form. Methylation rates very widely from one aquatic system to another for reasons that are not fully understood. Lacking the data, it is difficult to determine if the BAF used in the GLI represent the potential for mercury bioaccumulation in surface waters in California. It should be noted, however, that there is no scientific reason to believe that a true average BAF in California, were it known, would be lower than that developed for the Great Lakes basin; that is, the true average for California could be higher or lower than the BAF developed for the GLI.

EPA is developing a national BAF for mercury. The mercury BAF is part of the Mercury Study Report to Congress: SAB Review Draft (The Draft Report to Congress) . The Draft Report to Congress is currently available through NTIS (EPA–452/R–96–001a–h) . The next step is for the SAB to review the Draft Report to Congress. After the SAB reviews the Draft Report and the Agency makes changes based on their comments, the Report to Congress will be released with a final national BAF for mercury. Once the Report to Congress has been publicly reviewed, and finalized, the Agency will consider the science and could make changes to the section 304(a) criteria guidance for mercury to reflect the recommendation of the Report to Congress. If the section 304(a) criteria guidance for mercury changes, states will be expected to review their water quality standards for mercury and determine if their standards are protective.

d. Polychlorinated Biphenyls (PCBs) Criteria

The NTR, as amended, calculated human health criteria for PCBs using a cancer potency factor of 7.7 per (mg/kg)/day from the Agency's IRIS. This cancer potency factor was derived from the Norback and Weltman (1985) study which looked at rats that were fed Aroclor 1260. The study used the linearized multistage model with a default cross-species scaling factor (body weight ratio to the 2/3 power). Although it is known that PCB congeners vary greatly as to their potency in producing biological effects, for purposes of its carcinogenicity assessment, EPA considered Aroclor 1260 to be representative of all PCB mixtures. The Agency did not pool data from all available congener studies or generate a geometric mean from these studies, since the Norback and Weltman study was judged by EPA as acceptable, and not of marginal quality, in design or conduct as compared with other studies. Thereafter, the Institute for Evaluating Health Risks (IEHR, 1991) reviewed the pathological slides from the Norback and Weltman study, and concluded that some of the malignant liver tumors should have been interpreted as nonmalignant lesions, and that the cancer potency factor should be 5.1 per (mg/kg)/day as compared with EPA's 7.7 per (mg/kg)/day.

The Agency's recent peer-reviewed reassessment of the cancer potency of PCBs published in a final report, *PCBs: Cancer Dose-Response Assessment and Applications to Environmental Mixtures* (EPA/600/P–96/001F), adopts a different approach that distinguishes among PCB mixtures by using information on environmental processes. (The report is included in the administrative record of today's proposed rule.) The report considers all cancer studies (which used commercial mixtures only) to develop a range of cancer potency factors, then uses information on environmental processes to provide guidance on choosing an appropriate potency factor for representative classes of environmental mixtures and different pathways. The reassessment provides that, depending on the specific application, either central estimates or upper bounds can be appropriate. Central estimates describe a typical individual's risk, while upper bounds provide assurance (i.e., 95% confidence) that this risk is not likely to be underestimated if the underlying model is correct. Central estimates are used for comparing or ranking environmental hazards, while upper bounds provide information about the precision of the comparison or ranking. In the reassessment, the use of the upper bound values were found to increase cancer potency estimates by two or

three-fold over those using central tendency. Upper bounds are useful for estimating risks or setting exposure-related standards to protect public health, and are used by EPA in quantitative cancer risk assessment. Thus, the cancer potency of PCB mixtures is determined using a tiered approach based on environmental exposure routes with upper-bound potency factors (using a body weight ratio to the 3/4 power) ranging from 0.07 (lowest risk and persistence) to 2 (high risk and persistence) per (mg/kg)/day for average lifetime exposures to PCBs. It is noteworthy that bioaccumulated PCBs appear to be more toxic than commercial PCBs and appear to be more persistent in the body. For exposure through the food chain, risks can be higher than other exposures.

EPA issued the final reassessment report on September 27, 1996 and updated IRIS to include the reassessment on October 1, 1996. For this proposed rule, EPA derived the human health criteria for PCBs using a cancer potency factor of 2 per (mg/kg)/day, an upper bound potency factor reflecting high risk and persistence. This decision is based on recent multimedia studies indicating that the major pathway of exposure to persistent toxic substances such as PCBs is via dietary exposure (i.e., contaminated fish and shellfish consumption).

Following is the calculation of the human health criterion (HHC) for organism and water consumption:

$$HHC = \frac{RF \times BW \times (1{,}000\,\mu g/mg)}{q1^* \times [WC + (FC \times BCF)]}$$

Where:

RF=Risk Factor=$1 \times 10\ (-6)$

BW=Body Weight=70 kg

q1*=Cancer slope factor=2 kg-day/mg

WC=Water Consumption=2 l/day

FC=Fish and Shellfish Consumption=0.0065 kg/day

BCF=Bioconcentration Factor=31,200

the HHC (µg/l)=0.00017 µg/l (rounded to two significant digits).

Following is the calculation of the human health criterion for organism only consumption:

$$HHC = \frac{RF \times BW \times (1{,}000\,\mu g/mg)}{q1^* \times FC \times BCF}$$

Where:

RF=Risk Factor=$1 \times 10\ (-6)$

BW=Body Weight=70 kg

q1*=Cancer slope factor=2 kg-day/mg

FC=Total Fish and Shellfish Consumption per Day=0.0065 kg/day

BCF=Bioconcentration Factor=31,200

the HHC (µg/l)=0.00017 µg/l (rounded to two significant digits).

The criteria are both equal to 0.00017 µg/l and apply to the total PCBs or congener or isomer analyses (PCBs exposures should not be characterized in terms of aroclors). See *PCBs: Cancer Dose Response Assessment and Application to Environmental Mixtures* (EPA/600/9–96–001F). For a discussion of the body weight, water consumption, and fish and shellfish consumption factors, see the Human Health Guidelines. For a discussion of the BCF, see the 304(a) criteria guidance document for PCBs (included in the administrative record for this proposed rulemaking).

e. Section 304(a) Human Health Criteria Excluded

As is the case in the NTR, as amended, today's proposed rule does not propose criteria for certain priority pollutants for which CWA section 304(a) criteria guidance exists because those criteria were not based on toxicity to humans or aquatic organisms. The basis for these particular criteria is organoleptic effects (e.g., taste and odor) which would make water and edible aquatic life unpalatable but not toxic. Because the basis for this rule is to protect the public health and aquatic life from toxicity consistent with the language and intent in CWA section 303(c)(2)(B), EPA is promulgating criteria only for those priority toxic pollutants whose criteria recommendations are based on toxicity. The CWA section 304(a) human health criteria based on organoleptic effects for zinc and 3-methyl-4-chlorophenol are excluded for this reason. See the 1992 NTR discussion at 57 FR 60864.

f. Cancer Risk Level

EPA's CWA section 304(a) criteria guidance documents for priority toxic pollutants that are based on carcinogenicity present concentrations for upper bound risk levels of 1 excess cancer case per 100,000 people ($10^{-5}$), per 1,000,000 people ($10^{-6}$), and per 10,000,000 people ($10^{-7}$). However, the criteria documents do not recommend a particular risk level as EPA policy.

In today's proposed rule, EPA is proposing criteria that protect at an incremental cancer risk level of one in a million ($10^{-6}$) for all priority toxic pollutants regulated as carcinogens, consistent with those criteria promulgated in the NTR, as amended, for the State of California. The State had requested EPA to use a $10^{-6}$ risk level for carcinogenic pollutants in the NTR. In addition, standards adopted by the State contained in the Enclosed Bays and Estuaries Plan (EBEP), and the Inland Surface Waters Plan (ISWP), partially approved by EPA on November 6, 1991, and the Ocean Plan approved by EPA on June 28, 1990, contain a risk level of $10^{-6}$ for most carcinogens. Thus, the State has historically protected at a $10^{-6}$ risk level for carcinogenic pollutants. For today's proposed rule, the State has indicated a preference for EPA to propose criteria for carcinogenic pollutants at a $10^{-6}$ risk level, but to also discuss and request comment on a $10^{-5}$ risk level. Therefore, EPA is explicitly requesting comment on the adoption of a $10^{-5}$ risk level for carcinogenic pollutants proposed in this rule for the State of California. The effect of a $10^{-5}$ risk level will be to increase carcinogenic pollutant criteria values (noted in today's proposed matrix by footnote c) which are not already promulgated in the NTR, as amended, by one order of magnitude. For example, the proposed organism-only criterion for gamma BHC (pollutant number 105 in the matrix) is 0.013 µg/l; the criterion based on a $10^{-5}$ risk level would be 0.13 µg/l.

The State, in its readoption of its statewide plans for inland surface waters and enclosed bays and estuaries may consider other risk levels for carcinogenic pollutants. EPA

recommends that states consider minimum risk levels in the range of $10^{-4}$ to $10^{-6}$ for carcinogenic priority toxic pollutants to protect public health and welfare. See Human Health Guidelines.

**F. Description of the Proposed Rule**

*1. Scope*

Subpart (a), entitled ''Scope'', states that this rule is a proposed promulgation of criteria for priority toxic pollutants in the State of California for inland surface waters, enclosed bays, and estuaries. Subpart (a) also states that this rule contains an authorizing compliance schedule provision.

*2. EPA Criteria for Priority Toxic Pollutants*

EPA's proposed criteria for California are presented in tabular form that will appear at 40 CFR 131.38. For ease of presentation, the table that appears in this proposed rule combines water quality criteria promulgated in the NTR, as amended, that are outside the scope of this rulemaking, with the proposed criteria that are within the scope of today's proposed rule. This is intended to help readers determine applicable water quality criteria for the State of California. The table contains several footnotes for clarification; however, when EPA promulgates the final rule, the source of the criteria, either the NTR, as amended, or this rulemaking, may no longer be included as footnotes to the table.

As proposed, subpart (b) presents a matrix of the applicable EPA aquatic life and/or human health criteria for priority toxic pollutants. Section 303(c)(2)(B) of the CWA addresses only pollutants listed as ''toxic'' pursuant to section 307(a) of the CWA for which EPA has developed section 304(a) criteria guidance. As discussed earlier in this preamble, the section 307(a) list of toxics contains 65 compounds and families of compounds, which potentially include thousands of specific compounds. Of these, the Agency identified a list of 126 ''priority toxic pollutants'' to implement the CWA (see 40 CFR 131.36(b)). Reference in this proposed rule to priority toxic pollutants, toxic pollutants, or toxics refers to the 126 priority toxic pollutants.

EPA has not developed both aquatic life and human health CWA section 304(a) criterion guidance for all of the priority toxic pollutants. The matrix in paragraph (b) contains human health criteria in Column D for 100 priority toxic pollutants which are divided into criteria (Column 1) for water consumption (i.e., 2.0 liters per day) and aquatic organism consumption (i.e., 6.5 grams per day of aquatic organisms), and into criteria (Column 2) for aquatic organism only consumption. The term aquatic organism includes fish and shellfish such as shrimp, clams, oysters and mussels. One reason the total number of priority toxic pollutants with criteria proposed today differs from the total number of priority toxic pollutants contained in earlier published CWA section 304(a) criteria guidance is because EPA has developed and is proposing chromium criteria for two valence states with respect to aquatic life criteria. Thus, although chromium is a single priority toxic pollutant, there are two criteria for chromium for aquatic life protection. See pollutant 5 in today's proposed 40 CFR 131.38(b). Another reason is that EPA is proposing human health criteria for nine priority pollutants for which health-based national criteria have been calculated based on information obtained from EPA's IRIS database (EPA provided notice of these nine criteria in the NTR for inclusion in future State triennial reviews. See 57 FR 60848, 60890).

The matrix contains aquatic life criteria for 30 priority pollutants. These are divided into freshwater criteria (Column B) and saltwater criteria (Column C). These columns are further divided into acute and chronic criteria. The aquatic life criteria are considered by EPA to be protective when applied under the conditions described in the section 304(a) criteria documents and in the TSD. For example, water body uses should be protected if the criteria are not exceeded, on average, once every three year period. It should be noted that the criteria maximum concentrations (the acute criteria) are short-term concentrations and that the criteria continuous concentrations (the chronic criteria) are four-day averages. It should also be noted that for certain metals, the actual criteria are equations which are included as footnotes to the matrix. The toxicity of these metals is water hardness dependent and may be adjusted. The values shown in the table are illustrative only, based on a hardness expressed as calcium carbonate of 100 mg/l. Finally, the criterion for pentachlorophenol is pH dependent. The equation is the actual criterion and is included as a footnote. The value shown in the matrix is for a pH of 7.8.

Several of the freshwater aquatic life criteria are incorporated into the matrix in the format used in the 1980 criteria methodology which uses a final acute value instead of a continuous maximum concentration. This distinction is noted in footnote g of the table.

Proposed 40 CFR 131.38(c) would establish the applicability of the criteria to the State of California. Proposed 40 CFR 131.38(d) is described in Section F of this preamble.

EPA's purpose today is to propose the numeric toxics criteria necessary for California to meet the requirements of the CWA. In order for such criteria to achieve their intended purpose, the implementation scheme must be such that the final results protect aquatic life and public health. In Section E of this preamble, a discussion focuses on the factors in EPA's assessment of criteria for carcinogens. For example, fish and shellfish consumption rates, bioaccumulation factors, and cancer potency slopes are discussed. When any one of these factors is changed, the others must also be evaluated so that, on balance, resulting criteria are adequately protective.

Once an appropriate numeric criterion is selected for either aquatic life or human health protection, this facilitates the calculation of water quality-based effluent limits and/or total maximum daily loads (TMDLs) for that chemical. EPA has included in this rule appropriate implementation factors necessary to maintain the level of protection intended. These factors are included in subsection (c) of the proposed rule.

For example, in order to do steady state waste load allocation analyses, most states have low flow values for streams and rivers which establish flow rates for various purposes. These low flow values become design flows for sizing treatment plants and developing water quality-based effluent limits and/or TMDLs. Historically, these design flows were selected for the purposes of waste load allocation analyses which focused on instream dissolved oxygen concentrations and protection of aquatic life. With the publication of the 1985 TSD, EPA introduced hydrologically and biologically based analyses for the protection of aquatic life and human health. (These concepts have been expanded subsequently in EPA's Technical Guidance Manual for Performing Wasteload Allocations, Book 6, Design Conditions, U.S. EPA, 1986 . These new developments are included in Appendix D of the revised TSD. The discussion here is greatly simplified and is provided to support EPA's decision to promulgate design flows for instream flows and thereby maintain the intended stringency of the criteria for priority toxic pollutants.) EPA recommended either of two methods for calculating acceptable low flows, the

traditional hydrologic method developed by the U.S. Geological Survey and a biological based method developed by EPA. Other methods for evaluating the instream flow record may be available; use of these methods may result in TMDLs and/or water quality-based effluent limitations which adequately protect human health and/or aquatic life. The results of either of these two methods, or an equally protective alternative method, may be used.

The State of California may adopt specific design flows for streams and rivers to protect designated uses against the effects of toxics. Generally, in other states, these have followed the guidance in the TSD. However, EPA believes it is essential to state that the criteria will apply at specified design flows for steady state analyses in today's rule so that, where California has not yet adopted any such design flows, the criteria proposed today would be implemented appropriately. The TSD also recommends the use of three dynamic models to perform wasteload allocations. Dynamic wasteload models do not generally use specific steady state design flows but accomplish the same effect by factoring in the probability of occurrence of stream flows based on the historical flow record. For simplicity, only steady state conditions will be discussed here. Clearly, if the criteria were implemented using design flows that are too high, the resulting toxics controls would not be fully effective, because the resulting ambient concentrations would exceed EPA's criteria.

In the case of aquatic life, assuming exceedences occur more frequently than once in 3 years on the average, exceedences would result in diminished vitality of stream ecosystems characterized by the loss of desired species. Numeric water quality criteria should apply at all flows that are equal to or greater than flows specified below. The low flow values are:

Aquatic Life
- acute criteria (CMC) 1 Q 10 or 1 B 3
- chronic criteria (CCC) 7 Q 10 or 4 B 3

Human Health
- non-carcinogens 30 Q 5
- carcinogens harmonic mean flow

Where:

1 Q 10 is the lowest one day flow with an average recurrence frequency of once in 10 years determined hydrologically;

1 B 3 is biologically based and indicates an allowable exceedence of once every 3 years. It is determined by EPA's computerized method (DFLOW model);

7 Q 10 is the lowest average 7 consecutive day low flow with an average recurrence frequency of once in 10 years determined hydrologically;

4 B 3 is biologically based and indicates an allowable exceedence for 4 consecutive days once every 3 years. It is determined by EPA's computerized method (DFLOW model);

30 Q 5 is the lowest average 30 consecutive day low flow with an average recurrence frequency of once in 5 years determined hydrologically; and the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows.

EPA is proposing that the harmonic mean flow be applied with human health criteria for carcinogens. The harmonic mean is a standard calculated statistical value. EPA's model for human health effects assumes that such effects occur because of a long-term exposure to low concentration of a toxic pollutant, for example, two liters of water per day for seventy years. To estimate the concentrations of the toxic pollutant in those two liters per day by withdrawal from streams with a high daily variation in flow, EPA believes the harmonic mean flow is the correct statistic to use in computing such design flows rather than other averaging techniques. (For a description of harmonic means see ''Design Stream Flows Based on Harmonic Means,'' Lewis A. Rossman, Jr. of Hydraulics Engineering, Vol. 116, No. 7, July, 1990.) Hydrologic assessment methods other than the hydrologically-based and biologically-based methods may prove effective in applying water quality criteria in specific receiving water settings.

All waters, whether or not suitable for such hydrologic calculations but included in this rule (including lakes, estuaries, and marine waters), would be required to attain the criteria proposed today. Such attainment would be required to occur at the end of the discharge pipe, unless the State authorizes mixing zones. EPA has approved mixing zone provisions in Regional Water Quality Control Board Basin Plans. Where the State intends to authorize a mixing zone, the criteria would apply at the locations allowed by the mixing zone. For example, the chronic criteria (CCC) would apply at the defined boundary of the chronic mixing zone. Discussion of and guidance on these factors are included in the revised TSD in Chapter 4.

EPA is aware that the criteria proposed today for some of the priority toxic pollutants are at concentrations less than EPA's current analytical detection limits. Analytical detection limits have never been an acceptable basis for setting water quality criteria since they are not related to actual environmental impacts. The environmental impact of a pollutant is based on a scientific determination, not a measuring technique which is subject to change. Setting the criteria at levels that reflect adequate protection tends to be a forcing mechanism to improve analytical detection methods. See 1985 Guidelines, page 21. As the methods improve, limits closer to the actual criteria necessary to protect aquatic life and human health became measurable. The Agency does not believe it is appropriate to propose or promulgate criteria that are not sufficiently protective.

EPA does believe, however, that the use of analytical detection limits are appropriate for determining compliance with National Pollutant Discharge Elimination System (NPDES) permit limits. This view of the role of detection limits was articulated in guidance for translating dioxin criteria into NPDES permit limits, which is the principal method used for water quality standards enforcement. See ''Strategy for the Regulation of Discharges of PHDDs and PHDFs from Pulp and Paper Mills to Waters of the U.S.'' Memorandum from the Assistant Administrator for Water to the Regional Water Management Division Directors, May 21, 1990. This guidance presents a model for addressing toxic pollutants which have criteria less than current detection limits. This guidance is equally applicable to other priority toxic pollutants with criteria less than current detection limits. The guidance explains that standard analytical methods may be used for purposes of determining compliance with permit limits, but not for purposes of establishing water quality criteria or permit limits. Under the CWA, analytical methods are appropriately used in connection with NPDES permit limit compliance determinations. Because of the function of water quality criteria, EPA has not considered the sensitivity of analytical methods in deriving the criteria proposed today.

EPA has proposed 40 CFR 131.38(c)(3) to determine when freshwater or saltwater aquatic life criteria apply. This provision incorporates a time parameter to better

define the critical condition. The structure of the paragraph is to establish applicable rules and to allow for site-specific exceptions where the rules are not consistent with actual field conditions. Because a distinct separation generally does not exist between freshwater and saltwater aquatic communities, EPA is establishing the following: (1) The freshwater criteria apply at salinities of 1 part per thousand and below at locations where this occurs 95% or more of the time; (2) saltwater criteria apply at salinities of 10 parts per thousand and above at locations where this occurs 95% more of the time; and (3) at salinities between 1 and 10 parts per thousand the more stringent of the two apply unless EPA approves the application of the freshwater or saltwater criteria based on an appropriate biological assessment. The percentiles included here were selected to minimize the chance of overlap, that is, one site meeting both criteria. Determination of these percentiles can be done by any reasonable means such as interpolation between points with measured data or by the application of calibrated and verified mathematical models (or hydraulic models). It is not EPA's intent to require actual data collection at particular locations.

In the brackish water transition zones of estuaries with varying salinities, there generally will be a mix of freshwater and saltwater species. Generally, therefore, it is reasonable for the more stringent of the freshwater or saltwater criteria to apply. In evaluating appropriate data supporting the alternative set of criteria, EPA will focus on the species composition as its preferred method. This assignment of criteria for fresh, brackish and salt waters was developed in consultation with EPA's research laboratories at Duluth, Minnesota and Narragansett, Rhode Island. The Agency believes such an approach is consistent with field experience.

Subsection (d) lists the designated water and use classifications for which the proposed criteria apply. The criteria are applied to the beneficial use designations adopted by the State of California; EPA has not promulgated any new use classifications in this rule.

*Exceedence Frequency:* In a water quality criterion for aquatic life, EPA recommends an allowable frequency for excursions of the criteria. See 1985 Guidelines, pages 11–13. This allowable frequency provides an appropriate period of time during which the aquatic community can recover from the effect of an excursion and then function normally for a period of time before the next excursion. An excursion is defined as an occurrence of when the average concentration over the duration of the averaging period is above the CCC or the CMC. As ecological communities are naturally subjected to a series of stresses, the allowable frequency of pollutant stress may be set at a value that does not significantly increase the frequency or severity of all stresses combined. See also TSD, Appendix D. In addition, providing an allowable frequency for exceeding the criterion recognizes that it is not generally possible to assure that criteria are never exceeded. (TSD, page 36.)

Based on the available data, EPA is proposing that the acute criterion for a pollutant be exceeded no more than once in three years on the average. EPA is also proposing that the chronic criterion for a pollutant be exceeded no more than once in three years on the average. EPA acknowledges that the State may develop allowable frequencies that differ from these allowable frequencies, so long as they are scientifically supportable, but believes that these allowable frequencies are protective of the designated uses.

The use of aquatic life criteria for developing water quality-based effluent limits in permits requires the permitting official to use an appropriate wasteload allocation model. (TSD, Appendix D–6.) As discussed above, there are generally two methods for determining design flows, the hydrologically-based method and the biologically-based method.

The biologically-based method directly uses the averaging periods and frequencies specified in the aquatic life criteria for determining design flows. (TSD, Appendix. D–8.) Because the biologically-based method calculates the design flow directly from the duration and allowable frequency, it most accurately provides the allowed number of excursions. The hydrologically based method applies the CMC at a design flow equal to or equivalent to the 1Q10 design flow (i.e., the lowest one-day flow with a recurrence frequency of one year in ten years), and applies the CCC at the 7Q10 design flow (i.e., the lowest seven day flow with a recurrence frequency of one year in ten years).

EPA established a three year allowable frequency in the NTR. In settlement of the litigation on the NTR, EPA stated that it was in the midst of conducting, sponsoring, or planning research aimed at addressing scientific issues related to the basis for and application of water quality criteria and mentioned the issue of allowable frequency. See Partial Settlement Agreement in *American Forest and Paper Ass'n, Inc. et al.* v. *U.S. EPA* (Consolidated Case No. 93–0694 (RMU) D.D.C. To that end, EPA is reevaluating issues raised about allowable frequency as part of its work in revising the 1985 Guidelines.

In addition, EPA received public comment on the allowable frequency incorporated into the amendments to the NTR. These comments argued that a once every three years on the average excursion frequency for 4-day average concentrations, or a 7Q10 design flow for chronic criteria, was unnecessarily restrictive. For chronic criteria, commenters noted that EPA has approved use of a 30Q3 design in Colorado, a 30Q5 design flow in Maryland, and a 1 percent exceedance frequency in Pennsylvania. Comments recommended that EPA use the 30Q5 design flow for chronic criteria.

EPA recognizes that additional data concerning (a) the probable frequency of lethal events for an assemblage of taxa covering a range of sensitivities to pollutants, (b) the probable frequency of sublethal effects for such taxa, (c) the differing effects of lethal and sublethal events in reducing populations of such taxa, and (d) the time needed to replace organisms lost as a result of toxicity, may lead to further refinement of the allowable frequency value. Due to lack of available resources, EPA has not yet completed this work. Until this work is complete, EPA believes that the three year allowable frequency represents a value in the reasonable range for this parameter.

*3. Implementation*

Once the applicable designated uses and water quality criteria for a water body are determined, under the National Pollutant Discharge Elimination System (NPDES) program, discharges to the water body must be characterized and the permitting authority must determine the need for permit limits. If a discharge causes, has the reasonable potential to cause, or contributes to an excursion of a numeric or narrative water quality criteria, the permitting authority must develop permit limits as necessary to meet water quality standards. These permit limits are water quality-based effluent limitations or WQBELs. The terms ''cause,'' ''reasonable potential to cause,'' and ''contribute to'' are the terms in the NPDES regulations for conditions under which water quality-based permit limits are required. See 40 CFR 122.44(d)(1).

*Total Maximum Daily Loads (TMDLs):* If a water quality problem is identified, a wasteload allocation (WLA) based on an existing total maximum daily load

(TMDL) may be established. A TMDL is the sum of the individual WLAs for point sources and load allocations (LA) for nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. WLAs represent that portion of a TMDL that is allocated to existing and future point sources so that surface water quality is protected at all flow conditions.

The TMDL process uses water quality analyses to predict water quality conditions and pollutant concentrations. Point source and nonpoint source allocations are established so that predicted receiving water concentrations do not exceed water quality standards. TMDLs and WLAs/LAs should be established at levels necessary to attain and maintain the applicable narrative and numerical water quality standards, with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between point and nonpoint source loadings and water quality.

The CWA under section 303(d), requires the establishment of TMDLs for stream segments listed as ''water quality limited'' pursuant to section 303(d). In such segments, water quality does not meet applicable water quality standards and/or is not expected to meet applicable water quality standards. A TMDL includes a determination of the amount of a pollutant, or property of a pollutant, from point, nonpoint, and natural background sources, including a margin of safety, that may be discharged to a water-quality limited water body.

During California's recent set of Task Force meetings concerning the readoption of statewide water quality control plans, the Permitting Task Force made several recommendations concerning the TMDL process. Since the TMDL process can be significantly labor and data intensive, a recommendation was made to create collaborative efforts to establish TMDLs on water quality limited water bodies. This collaborative effort by dischargers, the State, EPA, and other stakeholders, could distribute work and associated costs between the interested parties, as well as shorten the overall time necessary to complete the analyses. Another recommendation was to allow innovative alternatives to traditional ''pounds per day'' TMDLs. EPA supports these Task Force recommendations for the State of California.

Within the TMDL framework, EPA encourages innovative approaches such as effluent trading as a method to attain and/or maintain water quality standards. Effluent trading allows sources that can control pollutants beyond compliance with current requirements to sell or trade credits for its excess reduction to another source unable to control its own pollutants as effectively or as efficiently. The goal of an effluent trading program is to achieve similar or improved environmental results in a more cost-effective manner than under current regulatory structures. EPA's most current policy on effluent trading is summarized in the ''Policy Statement for Effluent Trading in Watersheds'' which was issued in January of 1996 and which reiterates President Clinton's commitment to effluent trading as expressed in the March 16, 1995 report on ''Reinventing Environmental Regulation.'' The Policy states that ''EPA will work cooperatively with key stakeholders to find sensible, innovative ways to meet water quality standards quicker and at less cost than traditional approaches alone.'' The policy outlines several different types of trades that may take place. These trades include but are not limited to the following: (1) Intra-plant trading between outfalls within one facility; (2) pretreatment trading between indirect industrial point sources that discharge to a POTW; (3) point to point source trading, point to nonpoint source trading, and nonpoint to nonpoint source trading.

*Interim Permit Limits:* The State's Permitting Task Force also discussed at length the issue of interim numeric permit limits when a TMDL/WLA/LA or other special study is underway but not completed. The Task Force made several recommendations regarding how to determine these interim limits. The Task Force recommended that interim numeric limits be calculated based on past performance and future uncertainty. Past performance and future uncertainty can be considered as factors in determining interim permit limits; however, permitting authorities may consider other factors, particularly factors concerning the water quality of the receiving water body and the overall goal to attain the water quality standard. The Task Force also recommended that a specific method be followed in determining interim limits and ''trigger'' concentrations above which corrective action would be necessary. EPA supports innovative ideas such as these, however, the State as the permitting authority has broad discretion in determining how interim permit limits should be ascertained in different situations. EPA supports the State's consideration of stakeholder Task Force recommendations to help deal with these controversial and complex issues.

*Mixing Zones:* Another important issue discussed during the State's Task Force meetings was the issue of mixing zones. A mixing zone is a limited area or volume of water where initial dilution of a discharge takes place and where water quality standards can be exceeded. Mixing zones have been applied in the water quality standards program since its inception. The present water quality standards regulation allows states to adopt acute and chronic mixing zones as a matter of state discretion, so long as the state's mixing zone protects the designated uses.

A mixing zone should be established to ensure that the zone will not impair the integrity of the water body as a whole, the zone will not cause lethality to passing organisms, and, considering likely pathways of exposure, that there are no significant human health risks. For application of two-number aquatic life criteria, as proposed in this rule, there may be up to two types of mixing zones. In the zone immediately surrounding the outfall, neither the acute nor the chronic criterion is met. The acute criterion is met at the edge of this zone. In the next mixing zone, the acute, but not the chronic, criterion is met. The chronic criterion is met at the edge of the second mixing zone. However, since both aquatic life and human health criteria are proposed in today's rule, the State may establish independent mixing zone policies for each. For any particular pollutant from any particular discharge, the magnitude, frequency, duration and mixing zone associated with each of the type of criteria may determine which one most limits the allowable discharge.

Several California Regional Water Quality Control Boards have adopted mixing zone provisions in their respective Basin Plans. These mixing zone provisions can be applied to discharges to water bodies to which water quality standards based on the criteria contained in this proposed rule will apply when these criteria are promulgated final.

*Variances:* Another important procedure to assist the State in effectively implementing water quality standards in the NPDES program is the water quality standard variance procedure. The State may adopt a statewide policy (or Regional Boards may adopt Basin-wide policies) to allow for water quality standard variances to individual dischargers. The variance policy would allow the State or Regional Board to grant a variance to an individual permittee from a water quality standard which is the basis of a water quality-based effluent limitation in a permit. The variance would allow the permittee time to achieve reasonable progress towards attaining a specific

water quality-based effluent limitation, without violating CWA section 402(a)(1) which requires that NPDES permittees meet all applicable water quality standards.

A permittee applying for a variance may not be a new or recommencing discharger. The water quality standard variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance. A variance does not effect the corresponding water quality standard for the water body receiving the discharge. Variances are designed to preserve the underlying water quality standard over the long term, while providing flexibility to individual dischargers in complying with permit limits based on the standards. When a variance is granted, the discharger is assured compliance during the term of a variance, as long as all variance conditions are met.

A State-adopted variance policy will be approved by the EPA if it is consistent with the substantive requirements set out at 40 CFR Part 131 for removing a designated use. Specifically, the State's policy must require the inclusion of a demonstration that a water quality standard is unattainable, based on one or more of the following grounds:

1. Naturally occurring pollutant concentrations prevent the attainment of the water quality standard;

2. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the water quality standard, unless these conditions may be compensated for by the discharge of sufficient volume of effluent to enable the standard to be met without violating State water conservation requirements;

3. Human-caused conditions or sources of pollution prevent the attainment of the water quality standard and cannot be remedied, or would cause more environmental damage to correct than to leave in place;

4. Dams, diversions or other types of hydrologic modifications preclude the attainment of a water quality standard, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the standard;

5. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate cover, flow, depth, pools, riffles, and the like, unrelated to chemical water quality, preclude attainment of the water quality standard; or

6. Controls more stringent than those required by CWA sections 301(b) and 306 would result in substantial and widespread economic and social impact.

EPA will approve a State policy providing for variances if the policy includes the following provisions:

1. The State will include each individual variance as part of its water quality standard or water quality plan;

2. The variance will include documentation that treatment more advanced than that required by CWA section 301(b) and 306 has been carefully considered, and that alternative effluent control strategies have been evaluated;

3. The underlying, more stringent criterion will be maintained and will be binding on all other dischargers;

4. The discharger who will be given a variance for one particular constituent will be required to meet the applicable criteria for other constituents;

5. The variance will be granted for a specific period of time and must be rejustified upon expiration, but at least every three years;

6. Reasonable progress will be made towards meeting the underlying standards;

7. The variance will not likely jeopardize the continued existence of any threatened or endangered species listed under Section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat; and

8. The variance will be subjected to public notice, comment, and hearing. See CWA section 303(c)(1) and 40 CFR 131.20. The public notice should contain a clear description of the impact of the variance upon achieving the water quality standard in the water body.

Once a variance has been approved by the State, it must be submitted to EPA for approval. If this proposed rule is still in effect, as with the State adoption of site-specific criteria, EPA would have to undertake rulemaking to make the necessary changes to this rule. Further guidance on variance policies is provided in EPA's 1994 Water Quality Standards Handbook, Chapters 2 and 5 (EPA 823–B–94–005a, August 1994).

EPA, however, cautions California and the public that promulgation of this federal rule removes most of the flexibility available to the State for modifying its standards on a discharger-specific or stream-specific basis. For example, variances and site-specific criteria development are actions sometimes adopted by states. These are optional policies under terms of the federal water quality standards regulation. Except for the water-effect ratio procedure for certain metals, EPA has not incorporated either optional policy, in general, in this proposed rulemaking, that is, EPA has not generally authorized State modifications of federal water quality standards. Each of these types of modifications will, in general, require federal rulemaking on a case-by-case basis to change the federal rule. Because of the time consuming nature of reviewing such requests, limited federal resources, and the need for the Agency to move into other priority program areas in establishing environmental controls, EPA alerts California and the public that a prompt Agency response is unlikely. The best course of action, if such provisions are desired, is for the State to adopt its own standards and take advantage, if it so chooses, of the flexibility offered by these optional provisions.

*4. Wet Weather Flows*

Questions have already arisen concerning the applicability of these proposed criteria to discharges from wet weather point sources. A wet weather point source means any discernible confined and discrete conveyance from which pollutants are, or may be, discharged as the result of a wet weather event. For purposes of this discussion, discharges from wet weather point sources shall include only: discharges of storm water from a municipal separate storm sewer as defined at 40 CFR 122.26(b)(8); storm water discharge associated with industrial activity as defined at 40 CFR 122.26(b)(14); discharges of storm water and sanitary wastewaters (domestic, commercial, and industrial) from a combined sewer overflow; or any storm water discharge for which a permit is required under section 402(p) of the CWA. A storm water discharge associated with industrial activity which is mixed with process wastewater is not considered a wet weather point source.

National Pollutant Discharge Elimination System (NPDES) permits for wet weather point source discharges must include limits necessary to implement applicable water quality standards, through application of water quality-based effluent limitations or WQBELs. Section 301(b)(1)(C) of the CWA, 33 U.S.C. 1311(b)(1)(C); see also Memorandum of E. Donald Elliot, Assistant Administrator and General Counsel, to Nancy J. Marvel, Region 9, dated January 9, 1991. When this rulemaking is complete, these criteria will be used to determine water quality standards in California and will therefore be the basis of WQBELs in NPDES permits for wet weather point sources. However, EPA recognizes that it is commonly infeasible to express

WQBELs as numeric limits for wet weather discharges and that in such cases best management practices (''BMPs'') may serve as WQBELs. See, *e.g., NRDC* v. *Costle,* 568 F. 2d 1369, 1380 (D.C. Cir. 1977) (''when numeric effluent limitations are infeasible, EPA may issue permits with conditions designed to reduce the level of effluent discharges to acceptable levels.''); *NRDC* v. *U.S. EPA,* 822 F. 2d 104, 122 (D.C. Cir. 1987) (''* * * Congress has seen fit to empower EPA to prescribe as wide a range of permit conditions as the agency deems appropriate in order to assure compliance with applicable effluent limits.''). It is therefore anticipated that WQBELs, including those necessary to meet the criteria set forth in this proposed rule, will be expressed as BMPs in wet weather discharges' NPDES permits, when the permitting authority determines that it is infeasible to express WQBELS as numeric limits.

*5. Schedules of Compliance*

A compliance schedule refers to an enforceable sequence of interim requirements in a permit leading to ultimate compliance with water quality-based effluent limitations or WQBELs in accordance with the CWA. The proposed authorizing compliance schedule provision authorizes, but does not require, the permit issuing authority in the State of California to include such compliance schedules in permits under appropriate circumstances. The State of California is authorized to administer the National Pollutant Discharge Elimination System (NPDES) program and may exercise its discretion when deciding if a compliance schedule is justified because of the technical or financial (or other) infeasibility of immediate compliance.

This authorizing compliance schedule provision is included in the proposed rule because of the potential for existing dischargers to have new or more stringent effluent limitations, under the final rule, for which immediate compliance would not be possible or practicable.

*New and Existing Dischargers:* The proposed provision allows compliance schedules only for an ''existing discharger'' which is defined as any discharger which is not a ''new California discharger.'' A ''new California discharger'' includes ''any building, structure, facility, or installation from which there is, or may be, a 'discharge of pollutants', the construction of which commenced after the effective date of this regulation.'' These definitions are modelled after the existing 40 CFR 122.2 definitions for parallel terms, but with a cut-off date modified to reflect this rule. Only ''new California dischargers'' are required to comply immediately upon commencement of discharge with effluent limitations derived from the criteria in this rule.

For ''existing dischargers'' whose permits were reissued or modified to contain new or more stringent limitations based upon certain water quality requirements, the permit could allow up to five years to comply with such limitations. The provision applies to new or more stringent effluent limitations based on the criteria in this EPA rule.

EPA has included ''increasing dischargers'' within the category of ''existing dischargers'' since ''increasing dischargers'' are existing facilities with a change—an increase—in their discharge. Such facilities may include those with seasonal variations. ''Increasing dischargers'' will already have treatment systems in place for their current discharge, thus, they have less opportunity than a new discharger does to design and build a new treatment system which will meet new water quality-based requirements for their changed discharge. Allowing existing facilities with an increasing discharge a compliance schedule will avoid placing the discharger at a competitive disadvantage vis-a-vis other existing dischargers who are eligible for compliance schedules.

The proposed rule does not prohibit the use of a short-term ''shake down period'' for new California dischargers as is provided for new sources or new dischargers in 40 CFR 122.29(d)(4). These regulations require that the owner or operator of (1) a new source; (2) a new discharger (as defined in 40 CFR 122.2) which commenced discharge after August 13, 1979; or (3) a recommencing discharger shall install and implement all pollution control equipment to meet the conditions of the permit before discharging. The facility must also meet all permit conditions in the shortest feasible time (not to exceed 90 days). This shake-down period is not a compliance schedule. This approach may be used to address violations which may occur during a new facility's start-up, especially where permit limits are water quality-based and biological treatment is involved.

The burden of proof to show the necessity of a compliance schedule is on the discharger, and the discharger must request approval from the permit issuing authority for a schedule of compliance. The discharger should submit a description of the minimum required actions or evaluations that must be undertaken in order to comply with the new or more restrictive discharge limits. Dates of completion for the required actions or evaluations should be included, and the proposed schedule should reflect the shortest practicable time to complete all minimum required actions.

*Duration of Compliance Schedules:* EPA believes that compliance schedules of three years or less will be sufficient to allow facilities to make the changes necessary to meet new or more restrictive discharge requirements in most cases. Such compliance periods are consistent with analogous provisions of the CWA including sections 301(b)(2) and 304(l). For example, section 301(b)(2)(C)—(F) of the Act provides that various technology-based effluent limitations shall be complied with as expeditiously as possible but no later than three years after effluent limitations are promulgated. Similarly, section 304(l) provides that sources shall comply with individual control strategies (water-quality based requirements) within three years.

However, the Agency also recognizes the concerns of dischargers regarding the amount of time and resources in some cases that may be needed for implementing certain new or complex state-of-the-art treatment technologies and other pollution prevention programs. The Agency recognizes that evaluation, design and implementation of facility-wide comprehensive pollution prevention control strategies involving product substitution, process line changes, new piping, revised waste handling, etc. may require more than three years at large facilities. In addition, EPA is aware that the technical and administrative process of modifying and implementing revised requirements for numerous industrial users at publicly owned treatment works, as well as planning, budgeting, and undertaking significant new construction to change treatment processes at a municipal treatment works, may require more than three years.

Therefore, the proposed rule provides that compliance schedules may provide for up to five years to meet new or more stringent effluent limitations in those limited circumstances where the permittee can demonstrate to the permit authority that such an extended schedule is warranted. EPA emphasizes its belief that in most situations less than three years will be required; EPA believes that permit authorities should consider shorter compliance schedules wherever possible or alternatively, not allow compliance schedules where unnecessary. This provision should not

be considered a default compliance schedule duration for existing facilities.

In instances where dischargers wish to conduct toxicological studies, analyze results, and adopt and implement new or revised water quality-based effluent limitations, EPA believes that five years is sufficient time within which to complete this process.

Under this proposal, where a schedule of compliance exceeds one year, interim requirements are to be specified and interim progress reports are to be submitted at least annually to the permit issuing authority, in at least one-year time intervals.

The proposed rule allows all compliance schedules to extend up to a maximum duration of five years, which is the maximum term of any NPDES permit. See 40 CFR 122.46. The discharger's opportunity to obtain a compliance schedule occurs when the existing permit for that discharge is issued, reissued or modified, whichever is sooner. Such compliance schedules, however, cannot be extended to any indefinite point of time in the future because no final compliance date for WQBELs based upon this rule shall be more than ten years from the effective date of the rule. Thus, delays in reissuing expired permits (including those which continue in effect under applicable NPDES regulations) cannot indefinitely extend the period of time during which a compliance schedule is in effect. Ten years allows for inclusion of the single maximum five-year compliance schedule in a permit which is reissued five years after the effective date of this rule (having been previously issued without WQBELS using today's proposed criteria on the eve of the effective date of this rule).

EPA recognizes that where a permit is modified during the permit term, and the permittee needs the full five years to comply, the five-year schedule may extend beyond the term of the modified permit. In such cases, the rule allows for the modified permit to contain a compliance schedule with an interim limit by the end of the permit term. When the permit is reissued, the permit authority may extend the compliance schedule in the next permit, provided that, taking into account the amount of time allowed under the previous permit, the entire compliance schedule shall not exceed five years. Final permit limits and compliance dates will be included in the record for the permit. Final compliance dates must occur within five years from the date of permit issuance, reissuance, or modification, unless additional or less time is provided for by law.

*Antibacksliding:* EPA wishes to address the potential concern over antibacksliding where revised permit limits based on new information are the result of the completion of additional studies. The Agency's interpretation of the CWA is that the antibacksliding requirements of section 402(o) of the CWA do not apply to revisions to effluent limitations made before the scheduled date of compliance for those limitations.

*State Compliance Schedule Provisions:* EPA supports the State in adopting a statewide provision independent of or as part of the current effort to readopt statewide water quality control plans, or in adopting individual basin-wide compliance schedule provisions through its nine Regional Water Quality Control Boards (RWQCBs). The State and RWQCBs have broad discretion to adopt a provision, including discretion on reasonable lengths of time for final compliance with WQBELs. EPA recognizes that practical time frames within which to set interim goals may be necessary to achieve meaningful, long-term improvements in water quality in California.

At this time, at least one RWQCB has adopted an authorizing compliance schedule provision as an amendment to its Basin Plan during its last triennial review process. If EPA includes an authorizing compliance schedule provision in the final rule, any appropriately adopted Basin Plan amendment concerning a compliance schedule provision would also be effective for the Basin.

### G. Executive Order (E.O.) 12866, Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51,735 (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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 and is therefore not subject to OMB review. The proposed rule establishes ambient water quality criteria which, by themselves, do not directly impose economic impacts. When these criteria are combined with the State-adopted designated uses for inland surface waters, enclosed bays and estuaries, water quality standards will be created. EPA acknowledges that there may be a cost to some dischargers for complying with new water quality standards after those standards are translated into specific National Pollutant Discharge Elimination System (NPDES) permit limits by the State. Consistent with the intent of E.O. 12866, EPA prepared an Economic Analysis (EA). Since the State has significant flexibility and discretion in how it chooses to implement standards within the NPDES permit program, the EA by necessity includes many assumptions about how the State will implement the water quality standards. These assumptions are based on a combination of EPA guidance and current permit conditions for the facilities examined in this analysis. (This is appropriate because if the State does not adopt statewide implementation provisions, the rule-based water quality standards would be implemented using existing State basin plan provisions, and EPA regulations and guidance.) A more precise measure of costs and benefits may not be known until the State adopts its implementation provisions. To account for the uncertainty of these assumptions, this analysis estimates a wide range of costs and benefits. By completing the EA, EPA intends to inform the public about how entities might be affected by implementation of rule-based water quality standards in the NPDES permit program.

*1. Baselines*

In order to estimate the costs and benefits, an appropriate baseline must be established. The baseline is the starting point for measuring incremental costs and benefits of a proposed regulation. The baseline is established by assessing what would occur in the absence of the proposed regulation. EPA estimated the incremental costs and benefits of potential State implementation of water quality standards based on the criteria

contained in today's proposed rule using two different models which used different baselines.

The first model used a baseline that results in no incremental impacts. This baseline assumes that, in the absence of this rule, the State would, pursuant to the NPDES regulations, 40 CFR 122.44(d)(iv), rely on the Regional Board narrative standards to establish numeric water quality-based effluent limits in permits. These limits could be based on the latest EPA 304(a) criteria—the same information upon which today's proposed criteria are based, or supplemented where necessary by other relevant information. Under this scenario, no impacts would be attributed permit limits based on implementation of water quality standards using the criteria contained in today's proposed rule, since the analysis presumes that the State, in the absence of this rule, would implement effluent limits that are as stringent as those that would be implemented using water quality standards based on today's proposed criteria.

The baseline used in the second model assumes that in the absence of the rule, current permit requirements and current effluent concentrations would continue into the future. This model generally uses a baseline of current permit limits to develop a high scenario cost estimate and a baseline of current effluent concentrations to develop a low scenario cost estimate. Using this second model, EPA estimated a range of potential costs that would result from State implementation of this rule's water quality criteria in NPDES permits. The costs and benefits sections that follow summarize the methodology and results of the analysis using this baseline.

*2. Costs*

Under the second model, EPA assessed the estimated compliance costs that facilities may incur to meet permit limits based on the criteria in today's proposed rule. The analysis focused on direct compliance costs such as capital costs and operation and maintenance costs (O&M) for end-of-pipe pollution control, indirect source controls, pollution prevention, monitoring, and costs of pursuing alternative methods of compliance.

The population of facilities with NPDES permits that discharge into California's enclosed bays, estuaries and inland surface waters includes 184 major dischargers and 1,057 minor dischargers. Of the 184 major facilities, 128 are publicly owned treatment works (POTWs) and 56 are industrial facilities. Approximately 2,144 indirect dischargers designated as significant industrial users discharge wastewater to those POTWs. For the direct dischargers, EPA used a three-phased process to select a sample of facilities to represent California dischargers potentially affected by the State's implementation of permit limits based on the criteria contained in this rule.

The first phase consisted of choosing three case study areas for which data was thought to exist. The three case studies with a total of 5 facilities included: the South San Francisco Bay (the San Jose/Santa Clara Water Pollution Control Plant and Sunnyvale Water Pollution Control Plant); the Sacramento River (the Sacramento Regional Wastewater Treatment Plant); and the Santa Ana River (the City of Riverside Water Quality Control Plant and the City of Colton Municipal Wastewater Treatment Facility). The second phase consisted of selecting five additional major industrial dischargers to complement the case-study POTWs.

The third and last selection phase involved selecting 10 additional facilities to improve the basis for extrapolating the costs of the selected sample facilities to the entire population of potentially affected dischargers. The additional 10 facilities were selected such that the group examined: (1) Was divided between major POTWs and major industrial discharger categories in proportion to the numbers of facilities in the State; (2) gave greater proportionate representation to major facilities than minor facilities based on a presumption that the majority of compliance costs would be incurred by major facilities; (3) gave a proportionate representation to each of four principal conventional treatment processes typically used by facilities in specified industries in California; and (4) was representative of the proportionate facilities located within the different California Regional Water Quality Control Boards. Within these constraints, facilities were selected at random to complete the sample.

For those facilities that were projected to exceed permit limits based on the proposed criteria, EPA estimated the incremental costs of compliance. Using a decision matrix or flow chart, costs were developed for two different scenarios—a ''low-end'' cost scenario and a ''high-end'' cost scenario—to account for a range of regulatory flexibility available to the State when implementing permit limits based on the proposed water quality criteria. The assumptions for baseline loadings also vary over the two scenarios. The low-end scenario generally assumed that facilities were discharging at the maximum effluent concentrations taken from actual monitoring data, while the high-end scenario generally assumed that facilities were discharging at their current effluent limits. The decision matrix specified assumptions used for selection of control options, such as optimization of existing treatment processes and operations, in-plant pollutant minimization and prevention, and end-of-pipe treatment.

Under this second baseline, where California is not presumed to implement narrative criteria pursuant to 40 CFR 122.44(d) in all permits, the annualized potential costs that direct and indirect dischargers may incur as a result of State implementation of permit limits based on water quality standards using today's proposed criteria are estimated to be between $15 million and $87 million. EPA believes that the costs incurred as a result of State implementation of these permit limits will approach the low-end of the cost range. Costs are unlikely to reach the high-end of the range because State authorities are likely to choose implementation options that provide some degree of flexibility or relief to point source dischargers. Furthermore, cost estimates for both scenarios, but especially for the high-end scenario, may be overstated because the analysis tended to use conservative assumptions in calculating these permit limits and in establishing baseline loadings. The baseline loadings for the high-end were based on current effluent limits rather than actual pollutant discharge data. Most facilities discharge pollutants in concentrations well below current effluent limits.

Under the low-end cost scenario, major industrial facilities and POTWs incur about 65 percent of the potential costs, and indirect dischargers incur about 35 percent of the potential costs. Among the direct dischargers, two categories incur the majority of potential costs: POTWs (67 percent), and Chemical/Petroleum Products (18 percent). The two highest average cost categories are Metals and Transportation Equipment ($57,000 per year) and POTWs ($27,000 per year). About 20 percent of the low-end costs are associated with pollution prevention activities, while 70 percent are associated with pursuing alternative methods of compliance under the regulations.

Under the high-end cost scenario, major industrial facilities and POTWs incur about 96 percent of the potential costs, and indirect dischargers incur about 4 percent of the potential costs. Among the direct dischargers, three categories incur the majority of potential

costs—POTWs (70 percent), Chemical/Petroleum Products (18 percent), and Metals and Transportation Equipment (8 percent). The average annual per plant cost for different industry categories ranges from zero to $816,000. The two highest average cost categories under the second baseline are Metals and Transportation Equipment ($816,000 per year) and Chemical/Petroleum Products ($678,000 per year). The shift in proportion of potential costs between direct and indirect dischargers is due to the assumption that more direct dischargers will use end-of-pipe treatment under the high-end scenario. Thus, a smaller proportion of indirect dischargers (10 percent) are impacted under the high-end scenario, since municipalities would add end-of-pipe treatment which would reduce the need for controls from indirect discharges. About 90 percent of the costs are for capital and operating costs for wastewater treatment while about 10 percent of the high-end costs are associated with pollution prevention activities.

*Cost-Effectiveness:* Cost-effectiveness is estimated in terms of the cost of reducing the loadings of toxic pollutants from point sources. The cost-effectiveness is derived by dividing the annual costs of implementing permit limits based on water quality standards using today's proposed criteria by the toxicity-weighted pounds (pound-equivalents) of pollutants removed. Pound-equivalents are calculated by multiplying pounds of each pollutant removed by the toxic weight (based on the toxicity of copper) for that pollutant.

Based on this analysis, State implementation of permit limits based on today's proposed criteria would be responsible for the reduction of about 630,000 to 7 million toxic pound-equivalents per year, or 18 to 30 percent of the toxic-weighted baseline for the low- and high-end scenarios, respectively. The cost-effectiveness of the scenarios ranges from $8 to $12 per pound-equivalent.

*3. Benefits*

The benefits analysis is intended to provide insight into both the types and potential magnitude of the economic benefits expected as a result of implementation of water quality standards based on today's proposed criteria. To the extent feasible, empirical estimates of the potential magnitude of the benefits are developed and then compared to the estimated costs of implementing water quality standards based on today's proposed criteria.

To perform a benefits analysis, the types or categories of benefits that apply need to be defined. EPA relied on a set of benefits categories that typically applies to changes in the water resource environment. Benefits were categorized as either use benefits or passive (nonuse) benefits depending on whether or not they involve some source of direct use of, or contact with, the resource. The most prominent use benefit categories are those related to recreational fishing, boating, and swimming. Another use benefit category of significance is human health risk reduction. Human health risk reductions can be realized through actions that reduce human exposure to contaminants such as exposure through the consumption of fish containing elevated levels of pollutants. Passive use benefits are those improvements in environmental quality that are valued by individuals apart from any use of the resource in question.

Benefits estimates were derived in this study using an approach in which benefits of discrete large-scale changes in water quality beyond present day conditions were estimated wherever feasible. A share of those benefits was then apportioned to implementation of water quality standards based on today's proposed criteria. The apportionment estimate was based on a three-stage process:

First, EPA assessed current total loadings from all sources that are contributing to the toxics-related water quality problems observed in the State. This defines the overall magnitude of loadings. Second, the share of total loadings that are attributable to sources that would be controlled through implementation of water quality standards based on today's proposed criteria was estimated. Since this analysis was designed to focus only on those controls imposed on point sources, this stage of the process entailed estimating the portion of total loadings originating from point sources. Third, the percentage reduction in loadings expected due to implementation of today's proposed criteria was estimated and then multiplied by the share of point source loadings to calculate the portion of benefits that could be attributed to implementation of water quality standards based on today's proposed criteria.

Total monetized annual benefits were estimated in the range of $1.5 to $51.7 million. By category, annual benefits were $0.0 to $5.3 million for avoided cancer risk, $0.6 to $10.1 million for recreational angling, and $0.9 to $36.3 million for passive use benefits.

There are numerous categories of potential or likely benefits that have been omitted from the quantified and monetized benefit estimates. In terms of potential magnitudes of benefit, the following are likely to be significant contributors to the underestimation of the monetized values presented above:

- Improvements in water-related (in-stream and near stream) recreation apart from fishing. The omission of potential motorized and nonmotorized boating, swimming, picnicking, and related in-stream and stream-side recreational activities from the benefits estimates could contribute to an appreciable underestimation of total benefits. Such recreational activities have been shown in empirical research to be highly valued, and even modest changes in participation and or user values could lead to sizable benefits statewide. Some of these activities can be closely associated with water quality attributes (notably, swimming). Other recreational activities may be less directly related to the water quality improvements, but might nonetheless increase due to their association with fishing, swimming, or other activities in which the participants might engage.
- Improvements in consumptive and nonconsumptive land-based recreation, such as hunting and wildlife observation. Improvements in aquatic habitats may lead (via food chain and related ecologic benefit mechanisms) to healthier, larger, and more diverse populations of avian and terrestrial species, such as waterfowl, eagles, and otters. Improvements in the populations for these species could manifest as improved hunting and wildlife viewing opportunities, which might in turn increase participation and user day values for such activities. Although the scope of the benefits analysis has not allowed a quantitative assessment of these values at either baseline or post-rule conditions, it is conceivable that these benefits could be appreciable.
- Improvements in human health resulting from reduction of non-cancer risk. EPA estimated that implementation of water quality standards based on the proposed criteria would result in a reduction of mercury concentrations in fish tissue and, thus, a reduction in the hazard from consumption of mercury contaminated fish. However, EPA was unable to monetize benefits due to reduced non-cancer health effects.
- Human health benefits for saltwater anglers outside of San Francisco Bay were not estimated. The number of saltwater anglers outside of San Francisco Bay is estimated to be 673,000 (based on Huppert, 1989, and U.S. FWS, 1993). The omission of other saltwater anglers may cause human health benefits to be underestimated.

**H. Executive Order 12875, Enhancing the Intergovernmental Partnership**

In compliance with Executive Order (E.O.) 12875 (58 FR 58093, October 28, 1993), EPA has involved the State and local governments in the development of this rule. In addition to the significant participation by State and local governments, several specific activities have been carried out. These include:

(1) In early August 1995, EPA published and distributed to approximately 4,000 recipients, a four-page newsletter to notify California stakeholders that EPA would be proposing criteria for priority toxic pollutants, and to invite interested parties to a public meeting in late August 1995. The extensive distribution list came from the State's interested stakeholder list developed for its readoption of water quality control plans.

(2) On August 24, 1995, EPA held two public meetings (one on the morning and one in the afternoon) to discuss the EPA' s promulgation with stakeholders and to answer any specific concerns. EPA announced that it would meet with any stakeholder group independently to discuss their group's concerns.

(3) Since approximately December of 1993, EPA has been holding public Focus Group Meetings with the discharger community and the State to inform them of EPA's progress on the rulemaking and to learn about the State's progress on the readoption of its statewide water quality control plans. Over the last three and one-half years, EPA has held over 12 meetings.

(4) In October of 1995, EPA and the State met with several leaders of the California's environmental community to discuss EPA's process and progress on its promulgation project and the State's process and progress on its readoption of statewide water quality control plans.

(5) In December of 1994 and in March of 1996, EPA participated in the State's public meetings for its readoption of statewide plans. At each meeting, EPA gave a short update on its progress of promulgating toxic criteria and then answered specific questions from interested parties.

(6) From April to October of 1995, EPA participated extensively in all eight of the State's Stakeholder Task Force groups which met monthly to discuss the State's readoption of statewide water quality control plans. When appropriate, EPA discussed its promulgation project and answered stakeholder questions concerning it.

EPA plans to continue this extensive outreach to its stakeholder groups. Contact the person listed under the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this preamble for more information.

**I. The Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, a federal agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with a ''federal mandate'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating any regulation for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows an agency to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency's Administrator publishes with the final rule an explanation why that alternative was not adopted. Before a federal agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of the affected small governments to have meaningful and timely input in the development of regulatory proposals with significant federal intergovernmental mandates, and for informing, educating, and advising small governments on compliance with the regulatory requirements. While EPA does not believe the rule would significantly or uniquely affect small governments, EPA has nevertheless made outreach efforts to small governments as is outlined in its small government agency plan.

EPA has determined that this rule does not contain a federal mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The proposed rule imposes no direct enforceable duties on the State or any local government or on the private sector; rather, this rule proposes ambient water quality criteria which, when combined with State-adopted designated uses, will create water quality standards for those water bodies with adopted uses. The State may use these resulting water quality standards in implementing its existing water quality control programs. Today's proposed rule does not directly regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

As discussed above, EPA has examined the range of possible indirect impacts from State implementation of the rule in the National Pollutant Discharge Elimination System (NPDES) permit program. As discussed above in Section G, the State has significant flexibility in establishing and implementing NPDES permit limits. As a result, the analysis makes many assumptions concerning how the State will implement the water quality standards in the NPDES permit program. These assumptions are discussed in the analysis. The actual effect on any group of stakeholders is greatly dependent on the State's implementation.

**J. The Regulatory Flexibility Act**

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), federal agencies generally are required to conduct an initial regulatory flexibility analysis (IRFA) describing the impact of the regulatory action on small entities as part of a proposed rulemaking. However, under section 605(b) of the RFA, if the Administrator for the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, the agency is not required to prepare an IRFA. The Administrator is today certifying, pursuant to section 605(b) of the RFA, that this proposed rule will not have a significant impact on a substantial number of small entities. Therefore, the Agency did not prepare an initial regulatory flexibility analysis.

The RFA requires analysis of the impacts of a rule on the small entities subject to the rules' requirements. See *United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. (''[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial

number of small entities that are subject to the requirements of the rule,'' *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court).) The Agency is thus certifying that today's rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

Under the CWA water quality standards program, states must adopt water quality standards for their waters that must be submitted to EPA for approval; if the Agency disapproves a state standard and the state does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA has authority to promulgate criteria or standards in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Act. These state standards (or EPA-promulgated standards) are implemented through various water quality control programs including the National Pollutant Discharge Elimination System (NPDES) program that limits discharges to navigable waters except in compliance with an EPA permit or permit issued under an approved state program. The CWA requires that all NPDES permits must include any limits on discharges that are necessary to meet state water quality standards.

Thus, under the CWA, EPA's promulgation of water quality criteria or standards establishes standards that the state implements through the NPDES permit process. The state has discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. While the state's implementation of federally-promulgated water quality criteria or standards *may* result in new or revised discharge limits being placed on small entities, the criteria or standards themselves do not apply to any discharger, including small entities.

Today's rule, as explained above, does not itself establish any requirements that are applicable to small entities. As a result of EPA's action here, the State of California will need to ensure that permits it issues comply with the water quality standards established by the criteria in today's proposed rule. In so doing, the State will have a number of discretionary choices associated with permit writing. While California's implementation of today's rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

Although the statute does not require EPA to prepare an IRFA when it proposes water quality criteria which will establish water quality standards for California, EPA has undertaken an analysis equivalent to an IRFA. This analysis focuses on State and local implementation procedures related to the NPDES permit program. This analysis is included in a document entitled, Implementation Analysis of Ambient Water Quality Criteria for Priority Toxic Pollutants in California which is part of the administrative record for this rulemaking. This document looks at the many implementation procedures of the NPDES permit program that the State implements to control pollutants from point source discharges. The procedures discussed in the document include: methods to calculate water quality-based effluent limits; mixing zones; site-specific translators for metals criteria; compliance schedules; effluent trading; water-effect ratios; variances; designated use reclassification; and site-specific criteria. Each of these implementation procedures can have an effect on how water quality standards, based on the criteria in today's proposed rule, will impact NPDES permit holders. Many of these procedures will lessen impacts on regulated entities.

The document also looks at implementation procedures used in the pretreatment program to control pollutant discharges from indirect dischargers. Indirect dischargers include retail, commercial, and small industrial facilities that discharge to publicly owned treatment works (POTWs). Local entities have significant flexibility to implement their pretreatment programs. These procedures include: methods to calculate local limits (allocation of pollutants); methods of pollution prevention for various specific sources; pretreatment pollutant trading; methods of low cost pollutant reductions; technical assistance to move toward or achieve zero-discharge; cost accounting to drive down levels of discharges; and a few of the regulatory relief options discussed in the direct discharger section, e.g., compliance schedules.

The discussion illustrates the significant amount of flexibility available to the State and local agencies when implementing the NPDES permit program and pretreatment program and emphasizes that appropriate use of the available implementation tools can greatly affect the impact to many direct and indirect dischargers.

### K. The Paperwork Reduction Act

This action requires no new or additional information collection subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore no information collection request will be submitted to the Office of Management and Budget for review.

### L. The Endangered Species Act

Pursuant to section 7(a) of the Endangered Species Act (ESA), EPA is consulting with the U.S. Fish and Wildlife Service (FWS) and the U.S. National Marine Fisheries Service (NMFS) concerning EPA's rulemaking action for the State of California. EPA has initiated informal consultation, and will complete informal and formal, if necessary, consultation before final action on the final rule. As a result of this consultation, EPA may modify some provisions of this proposed rule.

As part of the ESA process, EPA will submit to FWS and NMFS a Biological Evaluation for their review. When submitted, this document will become part of the administrative record for this rulemaking. If EPA initiates formal consultation, the FWS and NMFS would issue a Biological Opinion which may include Reasonable and Prudent Alternatives (RPAs). EPA will then make decisions regarding implementation of any RPAs. EPA, FWS and NMFS will continue to work closely together on this ESA consultation process.

### List of Subjects In 40 CFR Part 131

Environmental protection, Indian-lands, Water pollution control, Water quality standard, Toxic pollutant.

Dated: July 25, 1997.

**Carol Browner,**

*Administrator.*

For the reasons set out in the preamble, part 131 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*

## Subpart D—[Amended]

2. Section 131.38 is added to subpart D to read as follows:

### § 131.38 Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California.

(a) *Scope.* This section is a general promulgation of criteria for priority toxic pollutants in the State of

California for inland surface waters and enclosed bays and estuaries. This section also contains a compliance schedule provision.

(b)(1) Criteria for Priority Toxic Pollutants in the State of California.

**BILLING CODE 6560–50–P**

| A | | B | | C | | D | |
|---|---|---|---|---|---|---|---|
| | | FRESHWATER | | SALTWATER | | HUMAN HEALTH | |
| | | | | | | For Consumption of: | |
| Compound | CAS Number | CMC d (ug/L) B1 | CCC d (ug/L) B2 | CMC d (ug/L) C1 | CCC d (ug/L) C2 | Water & Organisms (ug/L) D1 | Organisms Only (ug/L) D2 |
| 1. Antimony | 7440360 | | | | | 14 a,s | 4300 a,t |
| 2. Arsenic | 7440382 | 340 i,m,w | 150 i,m,w | 69 i,m | 36 i,m | | |
| 3. Beryllium | 7440417 | | | | | n | n |
| 4. Cadmium | 7440439 | 4.3 e,i,m, w,x | 2.2 e,i,m, w | 42 i,m | 9.3 i,m | n | n |
| 5a. Chromium (III) | 16065831 | 550 e,i,m, o | 180 e,i,m, o | | | n | n |
| 5b. Chromium (VI) | 18540299 | 16 i,m,w | 11 i,m,w | 1100 i,m | 50 i,m | n | n |
| 6. Copper | 7440508 | 13 e,i,m, w,x | 9.0 e,i,m, w | 4.8 i,m | 3.1 i,m | 1300 | |
| 7. Lead | 7439921 | 65 e,i,m | 2.5 e,i,m | 210 i,m | 8.1 i,m | n | n |
| 8. Mercury | 7439976 | 1.4 i,m,w | 0.77 i,m,w | 1.8 i,m | 0.94 i,m | 0.050 a | 0.051 a |
| 9. Nickel | 7440020 | 470 e,i,m, w | 52 e,i,m, w | 74 i,m | 8.2 i,m | 610 a | 4600 a |
| 10. Selenium | 7782492 | p | 5.0 q | 290 i,m | 71 i,m | n | n |
| 11. Silver | 7440224 | 3.4 e,i,m | | 1.9 i,m | | | |
| 12. Thallium | 7440280 | | | | | 1.7 a,s | 6.3 a,t |
| 13. Zinc | 7440666 | 120 e,i,m, | 120 e,i,m, | 90 i,m | 81 i,m | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | w,x | w | | | | |
| 14. Cyanide | 57125 | 22 o | 5.2 o | 1 r | 1 r | 700 a | 220,000 a,j |

| A | | B FRESHWATER | | C SALTWATER | | D HUMAN HEALTH For Consumption of: | |
|---|---|---|---|---|---|---|---|
| Compound | CAS Number | CMC d (ug/L) B1 | CCC d (ug/L) B2 | CMC d (ug/L) C1 | CCC d (ug/L) C2 | Water & Organisms (ug/L) D1 | Organisms Only (ug/L) D2 |
| 15. Asbestos | 1332214 | | | | | 7,000,000 fibers/L k,s | |
| 16. 2,3,7,8 Tetrachloro-dibenzo-p-dioxin (TCDD or Dioxin) | 1746016 | | | | | 0.000000013 c | 0.000000014 c |
| 17. Acrolein | 107028 | | | | | 320 s | 780 t |
| 18. Acrylonitrile | 107131 | | | | | 0.059 a,c,s | 0.66 a,c,t |
| 19. Benzene | 71432 | | | | | 1.2 a,c | 71 a,c |
| 20. Bromoform | 75252 | | | | | 4.3 a,c | 360 a,c |
| 21. Carbon Tetrachloride | 56235 | | | | | 0.25 a,c,s | 4.4 a,c,t |
| 22. Chlorobenzene | 108907 | | | | | 680 a,s | 21,000 a,j,t |
| 23. Chlorodibromomethane | 124481 | | | | | 0.41 a,c | 34 a,c |
| 24. Chloroethane | 75003 | | | | | | |
| 25. 2-Chloroethylvinyl Ether | 110758 | | | | | | |

| Compound | CAS Number | B FRESHWATER CMC d (ug/L) B1 | B FRESHWATER CCC d (ug/L) B2 | C SALTWATER CMC d (ug/L) C1 | C SALTWATER CCC d (ug/L) C2 | D HUMAN HEALTH For Consumption of: Water & Organisms (ug/L) D1 | D HUMAN HEALTH For Consumption of: Organisms Only (ug/L) D2 |
|---|---|---|---|---|---|---|---|
| 26. Chloroform | 67663 | | | | | 5.7 a,c | 470 a,c |
| 27. Dichlorobromomethane | 75274 | | | | | 0.56 a,c | 46 a,c |
| 28. 1,1-Dichloroethane | 75343 | | | | | | |
| 29. 1,2-Dichloroethane | 107062 | | | | | 0.38 a,c,s | 99 a,c,t |
| 30. 1,1-Dichloroethylene | 75354 | | | | | 0.057 a,c,s | 3.2 a,c,t |
| 31. 1,2-Dichloropropane | 78875 | | | | | 0.52 a | 39 a |
| 32. 1,3-Dichloropropylene | 542756 | | | | | 10 a,s | 1,700 a,t |
| 33. Ethylbenzene | 100414 | | | | | 3,100 a,s | 29,000 a,t |
| 34. Methyl Bromide | 74839 | | | | | 48 a | 4,000 a |
| 35. Methyl Chloride | 74873 | | | | | n | n |
| 36. Methylene Chloride | 75092 | | | | | 4.7 a,c | 1,600 a,c |
| 37. 1,1,2,2-Tetrachloroethane | | | | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | 79345 | | | | | 0.17 a,c,s | 11 a,c,t |
| 38. Tetrachloroethylene | 127184 | | | | | 0.8 c,s | 8.85 c,t |
| 39. Toluene | 108883 | | | | | 6,800 a | 200,000 a |
| 40. 1,2-Trans-Dichloroethylene | 156605 | | | | | 700 a | 140,000 a |

| A | | B | | C | | D | |
|---|---|---|---|---|---|---|---|
| | | FRESHWATER | | SALTWATER | | HUMAN HEALTH | |
| Compound | CAS Number | CMC d (ug/L) B1 | CCC d (ug/L) B2 | CMC d (ug/L) C1 | CCC d (ug/L) C2 | For Consumption of: Water & Organisms (ug/L) D1 | Organisms Only (ug/L) D2 |
| 41. 1,1,1-Trichloroethane | 71556 | | | | | n | n |
| 42. 1,1,2-Trichloroethane | 79005 | | | | | 0.60 a,c,s | 42 a,c,t |
| 43. Trichloroethylene | 79016 | | | | | 2.7 c,s | 81 c,t |
| 44. Vinyl Chloride | 75014 | | | | | 2 c,s | 525 c,t |
| 45. 2-Chlorophenol | 95578 | | | | | 120 a | 400 a |
| 46. 2,4-Dichlorophenol | 120832 | | | | | 93 a,s | 790 a,t |
| 47. 2,4-Dimethylphenol | 105679 | | | | | 540 a | 2,300 a |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 48. 2-Methyl- 4,6-Dinitrophenol | 534521 | | | | | 13.4 s | 765 t |
| 49. 2,4-Dinitrophenol | 51285 | | | | | 70 a,s | 14,000 a,t |
| 50. 2-Nitrophenol | 88755 | | | | | | |
| 51. 4-Nitrophenol | 100027 | | | | | | |
| 52. 3-Methyl 4-Chlorophenol | 59507 | | | | | | |

| A | | B | | C | | D | |
|---|---|---|---|---|---|---|---|
| | | FRESHWATER | | SALTWATER | | HUMAN HEALTH | |
| Compound | CAS Number | CMC d (ug/L) B1 | CCC d (ug/L) B2 | CMC d (ug/L) C1 | CCC d (ug/L) C2 | For Consumption of: Water & Organisms (ug/L) D1 | Organisms Only (ug/L) D2 |
| 53. Pentachlorophenol | 87865 | 19 f,w | 15 f,w | 13 | 7.9 | 0.28 a,c | 8.2 a,c,j |
| 54. Phenol | 108952 | | | | | 21,000 a | 4,600,000 a,j,t |
| 55. 2,4,6-Trichlorophenol | 88062 | | | | | 2.1 a,c | 6.5 a,c |
| 56. Acenaphthene | 83329 | | | | | 1,200 a | 2,700 a |
| 57. Acenaphthylene | 208968 | | | | | | |
| 58. Anthracene | 120127 | | | | | 9,600 a | 110,000 a |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 59. Benzidine | 92875 | | | | | 0.00012 a,c,s | 0.00054 a,c,t |
| 60. Benzo(a)Anthracene | 56553 | | | | | 0.0044 a,c | 0.049 a,c |
| 61. Benzo(a)Pyrene | 50328 | | | | | 0.0044 a,c | 0.049 a,c |
| 62. Benzo(b)Fluoranthene | 205992 | | | | | 0.0044 a,c | 0.049 a,c |
| 63. Benzo(ghi)Perylene | 191242 | | | | | | |
| 64. Benzo(k)Fluoranthene | 207089 | | | | | 0.0044 a,c | 0.049 a,c |

| A | | B | | C | | D | |
|---|---|---|---|---|---|---|---|
| | | FRESHWATER | | SALTWATER | | HUMAN HEALTH | |
| | | | | | | For Consumption of: | |
| Compound | CAS Number | CMC d (ug/L) B1 | CCC d (ug/L) B2 | CMC d (ug/L) C1 | CCC d (ug/L) C2 | Water & Organisms (ug/L) D1 | Organisms Only (ug/L) D2 |
| 65. Bis(2-Chloroethoxy)Methane | 111911 | | | | | | |
| 66. Bis(2-Chloroethyl)Ether | 111444 | | | | | 0.031 a,c,s | 1.4 a,c,t |
| 67. Bis(2-Chloroisopropyl)Ether | 108601 | | | | | 1,400 a | 170,000 a,t |
| 68. Bis(2-Ethylhexyl)Phthalate | 117817 | | | | | 1.8 a,c,s | 5.9 a,c,t |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 69. 4-Bromophenyl Phenyl Ether | 101553 | | | | | | |
| 70. Butylbenzyl Phthalate | 85687 | | | | | 3000 a | 5200 a |
| 71. 2-Chloronaphthalene | 91587 | | | | | 1,700 a | 4,300 a |
| 72. 4-Chlorophenyl Phenyl Ether | 7005723 | | | | | | |
| 73. Chrysene | 218019 | | | | | 0.0044 a,c | 0.049 a,c |
| 74. Dibenzo(a,h)Anthracene | 53703 | | | | | 0.0044 a,c | 0.049 a,c |
| 75. 1,2 Dichlorobenzene | 95501 | | | | | 2,700 a | 17,000 a |
| 76. 1,3 Dichlorobenzene | 541731 | | | | | 400 | 2,600 |

| A | | B | | C | | D | |
|---|---|---|---|---|---|---|---|
| | | FRESHWATER | | SALTWATER | | HUMAN HEALTH | |
| | | | | | | For Consumption of: | |
| Compound | CAS Number | CMC d (ug/L) B1 | CCC d (ug/L) B2 | CMC d (ug/L) C1 | CCC d (ug/L) C2 | Water & Organisms (ug/L) D1 | Organisms Only (ug/L) D2 |
| 77. 1,4 Dichlorobenzene | 106467 | | | | | 400 | 2,600 |
| 78. 3,3 Dichlorobenzidine | 91941 | | | | | 0.04 a,c,s | 0.077 a,c,t |
| 79. Diethyl Phthalate | 84662 | | | | | 23,000 a,s | 120,000 a,t |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 80. Dimethyl Phthalate | 131113 | | | | | 313,000 s | 2,900,000 t |
| 81. Di-n-Butyl Phthalate | 84742 | | | | | 2,700 a,s | 12,000 a,t |
| 82. 2,4-Dinitrotoluene | 121142 | | | | | 0.11 c,s | 9.1 c,t |
| 83. 2,6-Dinitrotoluene | 606202 | | | | | | |
| 84. Di-n-Octyl Phthalate | 117840 | | | | | | |
| 85. 1,2-Diphenylhydrazine | 122667 | | | | | 0.040 a,c,s | 0.54 a,c,t |
| 86. Fluoranthene | 206440 | | | | | 300 a | 370 a |
| 87. Fluorene | 86737 | | | | | 1,300 a | 14,000 a |
| 88. Hexachlorobenzene | 118741 | | | | | 0.00075 a,c | 0.00077 a,c |

| A | | B | | C | | D | |
|---|---|---|---|---|---|---|---|
| | | FRESHWATER | | SALTWATER | | HUMAN HEALTH | |
| Compound | CAS Number | CMC d (ug/L) B1 | CCC d (ug/L) B2 | CMC d (ug/L) C1 | CCC d (ug/L) C2 | For Consumption of: Water & Organisms (ug/L) D1 | Organisms Only (ug/L) D2 |
| 89. Hexachlorobutadiene | 87683 | | | | | 0.44 a,c,s | 50 a,c,t |
| 90. Hexachlorocyclopentadiene | 77474 | | | | | 240 a,s | 17,000 a,j,t |

| Compound | CAS Number | B FRESHWATER CMC d (ug/L) B1 | B FRESHWATER CCC d (ug/L) B2 | C SALTWATER CMC d (ug/L) C1 | C SALTWATER CCC d (ug/L) C2 | D HUMAN HEALTH For Consumption of: Water & Organisms (ug/L) D1 | D HUMAN HEALTH For Consumption of: Organisms Only (ug/L) D2 |
|---|---|---|---|---|---|---|---|
| 91. Hexachloroethane | 67721 | | | | | 1.9 a,c,s | 8.9 a,c,t |
| 92. Indeno(1,2,3-cd)Pyrene | 193395 | | | | | 0.0044 a,c | 0.049 a,c |
| 93. Isophorone | 78591 | | | | | 8.4 c,s | 600 c,t |
| 94. Naphthalene | 91203 | | | | | | |
| 95. Nitrobenzene | 98953 | | | | | 17 a,s | 1,900 a,j,t |
| 96. N-Nitrosodimethylamine | 62759 | | | | | 0.00069 a,c,s | 8.1 a,c,t |
| 97. N-Nitrosodi-n-Propylamine | 621647 | | | | | 0.005 a | 1.4 a |
| 98. N-Nitrosodiphenylamine | 86306 | | | | | 5.0 a,c,s | 16 a,c,t |
| 99. Phenanthrene | 85018 | | | | | | |
| 100. Pyrene | 129000 | | | | | 960 a | 11,000 a |
| 101. 1,2,4-Trichlorobenzene | 120821 | | | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 102. Aldrin | 309002 | 3 g | | 1.3 g | | 0.00013 a,c | 0.00014 a,c |
| 103. alpha-BHC | 319846 | | | | | 0.0039 a,c | 0.013 a,c |
| 104. beta-BHC | 319857 | | | | | 0.014 a,c | 0.046 a,c |
| 105. gamma-BHC | 58899 | 0.95 w | | 0.16 g | | 0.019 c | 0.063 c |
| 106. delta-BHC | 319868 | | | | | | |
| 107. Chlordane | 57749 | 2.4 g | 0.0043 g | 0.09 g | 0.004 g | 0.00057 a,c | 0.00059 a,c |
| 108. 4,4'-DDT | 50293 | 1.1 g | 0.001 g | 0.13 g | 0.001 g | 0.00059 a,c | 0.00059 a,c |
| 109. 4,4'-DDE | 72559 | | | | | 0.00059 a,c | 0.00059 a,c |
| 110. 4,4'-DDD | 72548 | | | | | 0.00083 a,c | 0.00084 a,c |
| 111. Dieldrin | 60571 | 0.24 w | 0.056 w | 0.71 g | 0.0019 g | 0.00014 a,c | 0.00014 a,c |
| 112. alpha-Endosulfan | 959988 | 0.22 g | 0.056 g | 0.034 g | 0.0087 g | 110 a | 240 a |
| 113. beta-Endosulfan | 33213659 | 0.22 g | 0.056 g | 0.034 g | 0.0087 g | 110 a | 240 a |
| 114. Endosulfan Sulfate | 1031078 | | | | | 110 a | 240 a |

| A | | B | | C | | D | |
|---|---|---|---|---|---|---|---|
| | | FRESHWATER | | SALTWATER | | HUMAN HEALTH | |
| Compound | CAS Number | CMC d (ug/L) B1 | CCC d (ug/L) B2 | CMC d (ug/L) C1 | CCC d (ug/L) C2 | For Consumption of: Water & Organisms (ug/L) D1 | Organisms Only (ug/L) D2 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 115. Endrin | 72208 | 0.086 w | 0.036 w | 0.037 g | 0.0023 g | 0.76 a | | | | 0.81 a,j | |
| 116. Endrin Aldehyde | 7421934 | | | | | 0.76 a | | | | 0.81 a,j | |
| 117. Heptachlor | 76448 | 0.52 g | 0.0038 g | 0.053 g | 0.0036 g | 0.00021 a,c | | | | 0.00021 a,c | |
| 118. Heptachlor Epoxide | 1024573 | 0.52 g | 0.0038 g | 0.053 g | 0.0036 g | 0.00010 a,c | | | | 0.00011 a,c | |
| 119.- 125. Polychlorinated biphenyls (PCBs) | | | 0.014 g,u | | | 0.03 g,u | 0.00017 v | | | 0.00017 v | |
| 126. Toxaphene | 8001352 | 0.73 | 0.0002 | | 0.21 | 0.0002 | 0.00073 a,c | | | 0.00075 a,c | |
| TOTAL NUMBER OF CRITERIA (h): | | 24 | 28 | | 23 | 27 | 99 | | | 97 | |

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**Footnotes:**

a. These criteria have been revised to reflect the Agency q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of October 1, 1996. The fish tissue bioconcentration factor (BCF) from the 1980 documents was retained in each case.

b. This letter is not used as a footnote.

c. These criteria are based on carcinogenicity of 10 (−6) risk.

d. The Criteria Maximum Concentration (CMC) equals the highest concentration of a pollutant to which aquatic life can be

exposed for a short period of time without deleterious effects. Criteria Continuous Concentration (CCC) equals the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (4 days) without deleterious effects. ug/l equals micrograms per liter.

e. These freshwater aquatic life criteria for metals are expressed as a function of total hardness (mg/l) in the water body. The equations are provided in matrix at paragraph (b)(2) of this section. Values displayed above in the matrix correspond to a total hardness of 100 mg/l.

f. These freshwater aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows: Values displayed above in the matrix correspond to a pH of 7.8.
CMC=exp(1.005(pH)—4.830).
CCC=exp(1.005(pH)—5.290).

g. These aquatic life criteria for these compounds were issued in 1980 utilizing the 1980 Guidelines for criteria development. The acute values shown are final acute values (FAV) which by the 1980 Guidelines are instantaneous values as contrasted with a CMC which is a short-term average.

h. These totals simply sum the criteria in each column. For aquatic life, there are 30 priority toxic pollutants with some type of freshwater or saltwater, acute or chronic criteria. For human health, there are 100 priority toxic pollutants with either ''water + organism'' or ''organism only'' criteria. Note that these totals count chromium as one pollutant even though EPA has developed criteria based on two valence states. In the matrix, EPA has assigned numbers 5a and 5b to the criteria for chromium to reflect the fact that this list of 126 priority pollutants includes only a single listing for chromium.

i. Criteria for these metals are expressed as a function of the water-effect ratio, WER, as defined in paragraph (c) of this section.
CMC=column B1 or C1 value×WER;
CCC=column B2 or C2 value×WER.

j. No criteria for protection of human health from consumption of aquatic organisms (excluding water) was presented in the 1980 criteria document or in the 1986 Quality Criteria for Water. Nevertheless, sufficient information was presented in the 1980 document to allow a calculation of a criterion, even though the results of such a calculation were not shown in the document.

k. This criterion for asbestos is the MCL (40 CFR 131.36).

l. This letter is not used as a footnote.

m. These freshwater and saltwater criteria for metals are expressed in terms of the dissolved fraction of the metal in the water column. Criterion values were calculated by using EPA's Clean Water Act 304(a) guidance values (described in the total recoverable fraction) and then applying the conversion factors.

n. EPA is not promulgating human health criteria for these contaminants. However, permit authorities should address these contaminants in NPDES permit actions using the State's existing narrative criteria for toxics.

o. These criteria were promulgated for specific waters in California in the National Toxics Rule (''NTR''), codified at 40 CFR 131.36, December 22, 1992, as amended by May 4, 1995. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays or estuaries and waters of the State defined as inland, i.e., all surface waters of the State not ocean waters. These waters specifically include the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta.

**Note:** This section does not supersede § 131.36 (the NTR, as amended), for this criterion.

p. The CMC = 1/[(f1/CMC1) + (f2/CMC2)] where f1 and f2 are the fractions of total selenium that are treated as selenite and selenate respectively, and f1 + f2 = 1. CMC1 and CMC2 are the CMCs for selenite and selenate, respectively, or 185.9 ug/l and 12.83 ug/l, respectively. This criterion is in the total recoverable form. A criterion of 20 ug/l was promulgated for specific waters in California in the NTR, as amended, and was promulgated in the total recoverable form. The specific waters to which the NTR criterion applies include: Waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; and waters of Salt Slough, Mud Slough (north) and the San Joaquin River, Sack Dam to the mouth of the Merced River.

**Note:** This rule does not supersede § 131.36 (the NTR, as amended), for this criterion. The criterion in this section applies to additional waters of the United States in the State of California by this rulemaking.

**Note also:** The State of California adopted and EPA approved a site specific criterion for the San Joaquin River, mouth of Merced to Vernalis; therefore, this criterion does not apply to these waters.

q. This criterion is in the total recoverable form. This criterion was promulgated for specific waters in California in the NTR, as amended, and was promulgated in the total recoverable form. The specific waters to which the NTR criterion applies include: Waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; and waters of Salt Slough, Mud Slough (north) and the San Joaquin River, Sack Dam to Vernalis.

**Note:** This section does not supersede § 131.36 (the NTR, as amended), for this criterion. This criterion applies to additional waters of the United States in the State of California by this rulemaking.

**Note also:** The State of California adopted and EPA approved a site-specific criterion for the Grassland Water District, San Luis National Wildlife Refuge, and the Los Banos State Wildlife Refuge; therefore, this criterion does not apply to these waters.

r. These criteria were promulgated for specific waters in California in the NTR, as amended. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays or estuaries including the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta.

**Note:** This section does not supersede § 131.36 (the NTR, as amended), for these criteria.

s. These criteria were promulgated for specific waters in California in the NTR, as amended. The specific waters to which the NTR criteria apply include: Waters of the Sacramento-San Joaquin Delta and waters of the State defined as inland (i.e., all surface waters of the State not bays or estuaries or ocean) that include a MUN use designation.

**Note:** This section does not supersede § 131.36 (the NTR, as amended), for these criteria.

t. These criteria were promulgated for specific waters in California in the NTR, as amended. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays and estuaries including San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; and waters of the State defined as inland (i.e., all surface waters of the State not bays or estuaries or ocean) without a MUN use designation.

**Note:** This section does not supersede § 131.36 (the NTR, as amended), for these criteria.

u. PCBs are a class of chemicals which include aroclors 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825, and 12674112, respectively. The aquatic life criteria apply to this set of PCBs.

v. This criterion applies to total PCBs or congener or isomer analyses.

w. This criterion has been recalculated pursuant to the 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water, Office of Water, EPA–820–B–96–001, September 1996. See also Great Lakes Water Quality Initiative Criteria Documents for the Protection of Aquatic Life in Ambient Water, Office of Water, EPA–80–B–95–004, March 1995, available from the Water Resource Center, USEPA, 401 M St. SW., mail code RC 4100, Washington, DC 20460.

x. The State of California has adopted and EPA has approved site specific criteria for the Sacramento River (and tributaries) above Hamilton City; therefore, these proposed criteria do not apply to these waters.

**General Notes**

1. This chart lists all of EPA's priority toxic pollutants whether or not criteria guidance are available. Blank spaces indicate the absence of criteria guidance. Because of variations in chemical nomenclature systems, this listing of toxic pollutants does not duplicate the listing in Appendix A of 40 CFR Part 423. EPA has added the Chemical Abstracts Service (CAS) registry numbers, which provide a unique identification for each chemical.

2. The following chemicals have organoleptic-based criteria recommendations that are not included on this chart (for reasons which are discussed in the preamble): zinc, 3-methyl-4-chlorophenol.

3. For purposes of this section, freshwater criteria and saltwater criteria apply as specified in paragraph (c)(3) of this section.

(2) Factors for Calculating Metals Criteria:

$$CMC = WER \times (\text{Acute Conversion Factor}) \times (\exp\{m_A[\ln(\text{hardness})]+b_A\})$$

CCC = WER × (Chronic Conversion Factor) × (exp{$m_C$[ln(hardness)]+$b_C$})

Final CMC and CCC values should be rounded to two significant figures.

TABLE 1 TO PARAGRAPH (b)(2)

| Metal | Conversion factor (CF) for freshwater acute criteria | CF for freshwater chronic criteria | CF for saltwater acute criteria | CF (a) for saltwater chronic criteria |
|---|---|---|---|---|
| Antimony | (d) | (d) | (d) | (d) |
| Arsenic | 1.000 | 1.000 | 1.000 | 1.000 |
| Beryllium | (d) | (d) | (d) | (d) |
| Cadmium (b) | 0.944 | 0.909 | 0.994 | 0.994 |
| Chromium (III) | 0.316 | 0.860 | (d) | (d) |
| Chromium (VI) | 0.982 | 0.962 | 0.993 | 0.993 |
| Copper | 0.960 | 0.960 | 0.83 | 0.83 |
| Lead (b) | 0.791 | 0.791 | 0.951 | 0.951 |
| Mercury | 0.85 | 0.85 | 0.85 | 0.85 |
| Nickel | 0.998 | 0.997 | 0.990 | 0.990 |
| Selenium | (c) | (c) | 0.998 | 0.998 |
| Silver | 0.85 | (d) | 0.85 | (d) |
| Thallium | (d) | (d) | (d) | (d) |
| Zinc | 0.978 | 0.986 | 0.946 | 0.946 |

Footnotes:

(a) Conversion Factors for chronic marine criteria are not currently available. Conversion Factors for acute marine criteria have been used for both acute and chronic marine criteria.

(b) Conversion Factors for these pollutants are hardness dependent. CFs are based on a hardness of 100 mg/l as calcium carbonate ($CaCO_3$). Other hardness can be used; CFs should be recalculated using the following equations:

Cadmium: Acute: CF = 1.136672—[(ln{hardness})(0.041838)]

Chronic: CF = 1.101672—[(ln{hardness})(0.041838)]

Lead: Acute and Chronic: CF = 1.46203—[(ln{hardness})(0.145712)]

(c) Bioaccumulative compound and inappropriate to adjust to percent dissolved.

(d) EPA has not published an aquatic life criterion value.

**Note:** The term ''Conversion Factor'' represents the recommended conversion factor for converting a metal criterion expressed as the total recoverable fraction in the water column to a criterion expressed as the dissolved fraction in the water column. See ''Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria'', October 1, 1993, by Martha G. Prothro, Acting Assistant Administrator for Water, available from the Water Resource Center, USEPA, 401 M St. SW., mail code RC 4100, Washington, DC 20460; and § 131.36(b)(1).

TABLE 2 TO PARAGRAPH (b)(2)

| Metal | $m_A$ | $b_A$ | $m_C$ | $b_C$ |
|---|---|---|---|---|
| Cadmium | 1.128 | −3.6867 | 0.7852 | −2.715 |
| Copper | 0.9422 | −1.700 | 0.8545 | −1.702 |
| Chromium (III) | 0.8190 | 3.688 | 0.8190 | 1.561 |
| Lead | 1.273 | −1.460 | 1.273 | −4.705 |
| Nickel | 0.8460 | 2.255 | 0.8460 | 0.0584 |
| Silver | 1.72 | −6.52 | ..... | ..... |
| Zinc | 0.8473 | 0.884 | 0.8473 | 0.884 |

**Note:** The term ''exp'' represents the base e exponential function.

(c) *Applicability.* (1) The criteria in paragraph (b) of this section apply to the State's designated uses cited in paragraph (d) of this section and apply concurrently with any criteria adopted by the State, except when State regulations contain criteria which are more stringent for a particular parameter and use, or except as provided in footnotes p, q, and x in paragraph (b) of this section.

(2) The criteria established in this section are subject to the State's general rules of applicability in the same way and to the same extent as are other Federally-adopted and State-adopted numeric toxics criteria when applied to the same use classifications including mixing zones, and low flow values below which numeric standards can be exceeded in flowing fresh waters.

(i) For all waters with mixing zone regulations or implementation procedures, the criteria apply at the appropriate locations within or at the boundary of the mixing zones; otherwise the criteria apply throughout the water body including at the point of discharge into the water body.

(ii) The State shall not use a low flow value below which numeric standards can be exceeded that is less stringent than the following for water suitable for the establishment of low flow return frequencies (i.e., streams and rivers):

| | |
|---|---|
| Aquatic Life | |
| Acute Criteria (CMC): | 1 Q 10 or 1 B 3 |
| Chronic Criteria (CCC): | 7 Q 10 or 4 B 3 |
| Human Health | |
| Non-carcinogens: | 30 Q 5 |
| Carcinogens: | Harmonic Mean Flow |

Where:

CMC (Criteria Maximum Concentration) is the water quality criteria to protect against acute effects in aquatic life and is the highest instream concentration of a priority toxic pollutant consisting of a short-term average

not to be exceeded more than once every three years on the average;

CCC (Continuous Criteria Concentration) is the water quality criteria to protect against chronic effects in aquatic life and is the highest in stream concentration of a priority toxic pollutant consisting of a 4-day average not to be exceeded more than once every three years on the average;

1 Q 10 is the lowest one day flow with an average recurrence frequency of once in 10 years determined hydrologically;

1 B 3 is biologically based and indicates an allowable exceedence of once every 3 years. It is determined by EPA's computerized method (DFLOW model);

7 Q 10 is the lowest average 7 consecutive day low flow with an average recurrence frequency of once in 10 years determined hydrologically;

4 B 3 is biologically based and indicates an allowable exceedence for 4 consecutive days once every 3 years. It is determined by EPA's computerized method (DFLOW model);

30 Q 5 is the lowest average 30 consecutive day flow with an average recurrence frequency of once in 5 years determined hydrologically; and the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows.

(iii) If the State does not have such a low flow value below which numeric standards do not apply, then the criteria included in paragraph (d) or this section herein apply at all flows.

(3) The aquatic life criteria in the matrix in paragraph (b) of this section apply as follows:

(i) For waters in which the salinity is equal to or less than 1 part per thousand 95% or more of the time, the applicable criteria are the freshwater criteria in Column B;

(ii) For waters in which the salinity is equal to or greater than 10 parts per thousand 95% or more of the time, the applicable criteria are the saltwater criteria in Column C except for selenium in the San Francisco Bay estuary where the applicable criteria are the freshwater criteria in Column B (refer to footnotes p and q in section (b)(1) of this section); and

(iii) For waters in which the salinity is between 1 and 10 parts per thousand as defined in paragraphs (c)(3)(i) and (ii) of this section, the applicable criteria are the more stringent of the freshwater or saltwater criteria. However, the Regional Administrator may approve the use of the alternative freshwater or saltwater criteria if scientifically defensible information and data demonstrate that on a site-specific basis the biology of the water body is dominated by freshwater aquatic life and that freshwater criteria are more appropriate; or conversely, the biology of the water body is dominated by saltwater aquatic life and that saltwater criteria are more appropriate.

(4) *Application of metals criteria.* (i) For purposes of calculating freshwater aquatic life criteria for metals from the equations in paragraph (b)(2) of this section, for waters with a hardness of 400 mg/l or less as calcium carbonate, the actual ambient hardness of the surface water shall be used in those equations. For waters with a hardness of over 400 mg/l as calcium carbonate, a hardness of 400 mg/l as calcium carbonate shall be used with a default Water-Effect Ratio (WER) of 1, or the actual hardness of the ambient surface water shall be used with a WER. The same provisions apply for calculating the metals criteria for the comparisons provided for in paragraph (c)(3)(iii) of this section.

(ii) The hardness values used shall be consistent with the design discharge conditions established in paragraph (c)(2) of this section for flows and mixing zones.

(iii) The criteria for metals (compounds #1–#13 in paragraph (b) of this section) are expressed as dissolved except where otherwise noted. For purposes of calculating aquatic life criteria for metals from the equations in footnote i in the criteria matrix in paragraph (b)(1) of this section and the equations in paragraph (b)(2) of this section, the water effect ratio is generally computed as a specific pollutant's acute or chronic toxicity value measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. To use a water effect ratio other than the default of 1, the WER must be determined as set forth in Interim Guidance on Determination and Use of Water Effect Ratios, U.S. EPA Office of Water, EPA–823–B–94–001, February 1994, or alternatively, other scientifically defensible methods adopted by the State as part of its water quality standards program and approved by EPA. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in paragraph (b)(2) of this section must be determined as required in paragraph (c)(4)(ii) of this section. Water hardness must be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium should be approximately the same in standard laboratory toxicity testing water as in the site water.

(d)(1) Except as specified in paragraph (d)(3) of this section, all waters assigned any aquatic life or human health use classifications in the Water Quality Control Plans for the various Basins of the State (''Basin Plans''), as amended, adopted by the California State Water Resources Control Board (''SWRCB''), except for ocean waters covered by the Water Quality Control Plan for Ocean Waters of California (''Ocean Plan'') adopted by the SWRCB with resolution Number 90–27 on March 22, 1990, are subject to the criteria in paragraph (d)(2) of this section, without exception. These criteria apply to waters contained in the Basin Plans. More particularly, these criteria apply to waters in the Basin Plan chapters specifying water quality objectives (the State equivalent of federal water quality criteria) for the toxic pollutants identified in paragraph (d)(2) of this section. Although the State has adopted several use designations for each of these waters, for purposes of this action, the specific standards to be applied in paragraph (d)(2) of this section are based on the presence in all waters of some aquatic life designation and the presence or absence of the MUN use designation (municipal and domestic supply). (See Basin Plans for more detailed use definitions.)

(2) The following criteria from the matrix in paragraph (b)(1) of this section apply to the water and use classifications defined in paragraph (d)(1) of the section and identified below:

| Water and use classification | Applicable Criteria |
|---|---|
| All inland waters of the United States or enclosed bays and estuaries that are waters of the United States that include a MUN use designation. | These waters are assigned the criteria in:<br>Columns B1 and B2—all pollutants<br>Columns C1 and C2—all pollutants<br>Column D1—all pollutants |
| All inland waters of the United States or enclosed bays and estuaries that are waters of the United States that do not include a MUN use designation. | These waters are assigned the criteria in:<br>Columns B1 and B2—all pollutants<br>Columns C1 and C2—all pollutants<br>Column D2—all pollutants |

(3) Nothing in this section is intended to supersede specific criteria, including specific criteria for the San Francisco Bay estuary, promulgated for California in § 131.36.

(4) The human health criteria shall be applied at the State-adopted 10 (−6) risk level.

(5) Nothing in this section applies to waters located in Indian Country.

(e) *Schedules of Compliance:* (1) It is presumed that new and existing point source dischargers will promptly comply with any new or more restrictive water quality-based effluent limitations (''WQBELs'') based on the water quality criteria set forth in this section.

(2) When a permit issued on or after the effective date of this regulation to a new discharger contains a WQBEL based on water quality criteria set forth in the section, the permittee shall comply with such WQBEL upon the commencement of the discharge. A new discharger is defined as any building, structure, facility, or installation from which there is or may be a ''discharge of pollutants'' (as defined in 40 CFR 122.2) to the State of California's inland surface waters or enclosed bays and estuaries, the construction of which commenced after the effective date of this regulation.

(3) Where an existing discharger reasonably believes that it will be infeasible to promptly comply with a new or more restrictive WQBEL based on the water quality criteria set forth in this section, the discharger may request approval from the permit issuing authority for a schedule of compliance.

(4) A compliance schedule shall require compliance with WQBELs based on water quality criteria set forth in this section as soon as possible, taking into account the dischargers technical ability to achieve compliance with such WQBEL.

(5) If the schedule of compliance exceeds one year from the date of permit issuance, reissuance or modification, the schedule shall set forth interim requirements and dates for their achievement. The dates of completion between each requirement may not exceed one year. If the time necessary for completion of any requirement is more than one year and is not readily divisible into stages for completion, the permit shall require, at a minimum, specified dates for annual submission of progress reports on the status of interim requirements.

(6) In no event shall the permit issuing authority approve a schedule of compliance for a point source discharge which exceeds five years from the date of permit issuance, reissuance, or modification, whichever is sooner. Where shorter schedules of compliance are prescribed or schedules of compliance are prohibited by law, those provisions shall govern.

(7) If a schedule of compliance exceeds the term of a permit, interim permit limits effective during the permit shall be included in the permit and addressed in the permit's fact sheet or statement of basis. The administrative record for the permit shall reflect final permit limits and final compliance dates. Final compliance dates for final permit limits, which do not occur during the term of the permit, must occur within five years from the date of issuance, reissuance or modification of the permit which initiates the compliance schedule. Where shorter schedules of compliance are prescribed or schedules of compliance are prohibited by law, those provisions shall govern.

(8) No compliance schedule established in accordance with paragraphs (e)(3) through (7) of this section shall allow more than ten years from the effective date of this rule to achieve compliance with any WQBEL based on the criteria set forth in this section.

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