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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 98–076–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services by removing and adding commuted traveltime allowances for travel between various locations in Illinois. Commuted traveltime allowances are the periods of time required for Veterinary Services employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Veterinary Services employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for these locations.

EFFECTIVE DATE: August 6, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Louise Rakestraw Lothery, Director, Resource Management Support, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737, (301) 734–7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, chapter I, subchapter D, and 7 CFR, chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal products, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of Veterinary Services (VS) on a Sunday or holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by removing and adding commuted traveltime allowances for travel between various locations in Illinois. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The number of requests for overtime services of a VS employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

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

Executive Order 12372

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

Accordingly, 9 CFR part 97 is amended as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

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

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 97.2 is amended by removing or adding in the table, in

alphabetical order, the following entries to read as follows:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan Area	
		Within	Outside
[Remove]			
* * *	* * *		*
Illinois:			
Bloomington	Avon		4
Bloomington	Galesburg		4
Bloomington	Springfield		3
* * *	* * *		*
Chicago	Lynn Center		6
Peoria	Avon		2
Peoria	Galesburg		3
Peoria	Springfield		3
* * *	* * *		*
Springfield	Avon		3
Springfield	Galesburg		4
Windsor	Avon		4
Windsor	Springfield		2
* * *	* * *		*
[Add]			
* * *	* * *		*
Illinois:			
* * *	* * *		*
Chicago	Geneseo		6
* * *	* * *		*

Done in Washington, DC, this 3rd day of August 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–21039 Filed 8–5–98; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 614, 620, and 630

RIN 3052–AB67

Organization; Loan Policies and Operations; Disclosure to Shareholders; Disclosure to Investors in Systemwide and Consolidated Bank Debt Obligations of the Farm Credit System; Other Financing Institutions; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 611, 614, 620 and 630 on July 7, 1998 (63 FR 36541). The final rule amends the regulations governing the funding and discount relationship between Farm Credit System (System) banks that operate under title I of the Farm Credit Act of 1971, as amended, and non-System other financing institutions. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is August 6, 1998.

EFFECTIVE DATE: The regulation amending 12 CFR parts 611, 614, 620 and 630 published on July 7, 1998 (63 FR 36541) is effective August 6, 1998.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Policy Analyst or S. Robert Coleman, Senior Policy Analyst, Regulation and Policy Division, Office of Policy Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

Richard A. Katz, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: August 3, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–21028 Filed 8–5–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–07]

Modification of Class D Airspace; Colorado Springs USAF Academy Airstrip, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace area at Colorado Springs United States Air Force (USAF) Academy Airstrip, CO. The effect of this action provides additional airspace in the Visual Flight Rules (VFR) traffic pattern by increasing the ceiling of the Class D airspace from 8600'MSL to 8800'MSL.

EFFECTIVE DATE: 0901 UTC, October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–07, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On May 4, 1998, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class D airspace at Colorado Springs USAF Academy Airstrip, CO (63 FR 24500). The USAF Academy has seen substantial development adjacent to the airfield in recent years causing the VFR traffic pattern altitude to be increased to 7800'MSL (1000'AGL). In the interest of safety at this high intensity student training area, it is considered reasonable and necessary to have a 1000' Class D airspace area above the standard VFR traffic pattern. The 1000' of Class D area allows a student pilot a safety area of 500' above the standard VFR traffic pattern and still have 500' from overflights of the USAF Class D airspace. This rule satisfies the requirement of a 1000' safety area by increasing the Class D airspace area from 8600'MSL to 8800'MSL. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas are published in Paragraph 5000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace at Colorado Springs USAF Academy Airstrip, CO, by providing the additional airspace necessary to increase the Class D airspace area from 8600'MSL to 8800'MSL. This modification of airspace allows the VFR pattern to be fully encompassed within Class D airspace and still provide safe and efficient use of the navigable airspace and to promote safe flight operations under VFR at the Colorado Springs USAF Academy Airstrip.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 General

* * * * *

ANM CO D Colorado Springs USAF Academy, CO [Revised]

Colorado Springs USAF Academy Airstrip, CO

(Lat. 38°58′11″ N, long. 104°48′47″ W)

That airspace extending upward from the surface to and including 8,800 feet MSL within a 3-mile radius of the USAF Academy Airstrip, excluding that airspace within the Colorado Springs, CO, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Issued in Seattle, Washington, on July 22, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–21072 Filed 8–5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Office of the Commissioner

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the delegations of authority regulation that covers general redelegations of authority from the Commissioner of Food and Drugs to other officers of FDA. The amendment delegates an authority related to the waiver and reduction of prescription drug user fees to the Deputy Commissioner for Management and Systems and the Director, Office of Financial Management. Redelegation of this authority would allow for more efficient operations. Additionally, this amendment revokes part of the above authority from the FDA User Fee Waiver Officer, Deputy Chief Mediator and Ombudsman, and the Deputy User Fee Waiver Officer.

EFFECTIVE DATE: August 6, 1998.

FOR FURTHER INFORMATION CONTACT:

Suzanne O'Shea, Office of the Chief Mediator and Ombudsman (HF–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3390, or

Donna G. Page, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority under § 5.20 *General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration* (21 CFR 5.20) by

revising § 5.20(h) to authorize the Deputy Commissioner for Management and Systems and the Director, Office of Financial Management to perform the functions of the Commissioner of Food and Drugs under section 736(d)(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379h(d)(C)), as amended hereafter, to waive or reduce prescription drug user fees in situations where it is determined that ''the fees will exceed the anticipated present and future costs.'' Further, this authority is revoked from the delegations to the Chief Mediator and Ombudsman/ Deputy User Fee Waiver Officer, the Deputy Chief Mediator and Ombudsman, and the Deputy User Fee Waiver Officer, who previously had the authority.

Further redelegation of this authority is not authorized at this time. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; 15 U.S.C. 1451-1461; 21 U.S.C. 41-50, 61-63, 141-149, 321-394, 467f, 679(b), 801-886, 1031-1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u-300u-5, 300aa-1; 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124-131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220-223.

2. Section 5.20 is amended by revising paragraph (h) to read as follows:

§ 5.20 General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration.

* * * * *

(h)(1) The Chief Mediator and Ombudsman, designated as the User Fee Waiver Officer; the Deputy Chief Mediator and Ombudsman; and the Deputy User Fee Waiver Officer are authorized to perform the functions of the Commissioner under the Prescription Drug User Fee Act of 1992, as amended by the FDA Modernization Act of 1997 (21 U.S.C. 379h(d)), as amended hereafter, relating to waiving or reducing prescription drug user fees except for the functions under 21 U.S.C. 379h(d)(C), which pertains to situations where ''the fees will exceed the anticipated present and future costs.'' These authorities may not be further redelegated.

(2) The Deputy Commissioner for Management and Systems and the Director, Office of Financial Management are authorized to perform the functions of the Commissioner under 21 U.S.C. 379h(d)(C), as amended hereafter, to waive or reduce prescription drug user fees in situations where it is determined that ''the fees will exceed the anticipated present and future costs.'' This authority may not be further redelegated.

(3) The Deputy Commissioner for Operations, designated as the User Fee Appeals Officer, is authorized to hear and decide user fee waiver appeals. The decision of the User Fee Appeals Officer will constitute final agency action on such matters.

* * * * *

Dated: July 29, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–20954 Filed 8–5–98; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 518

RIN 3141–AA04

Issuance of Certificates of Self Regulation to Tribes for Class II Gaming

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission issues this rule which provides a process for the review and approval of petitions for tribal self-regulation of Class II gaming. This rule implements the Class II self-regulatory provisions of the Indian Gaming Regulatory Act and will provide both a financial benefit and reduction in Federal regulations for tribes that obtain certificates under this rule.

EFFECTIVE DATE: September 8, 1998.

FOR FURTHER INFORMATION CONTACT: Maria Getoff, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20036; telephone: 202–632–7003.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA, or the Act), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). Under the Act, the Commission is charged with regulating class II gaming and certain aspects of class III gaming on Indian lands. On March 12, 1998, the Commission proposed regulations for the issuance of certificates of self-regulation for class II gaming to Tribes. 63 FR 12319–12323. The Commission requested comments on those proposed regulations. On April 1, 1998, the Commission held a public hearing in Portland, Oregon, on the proposed regulations. Below is the Commission's analysis of the comments received both in writing during the comment period, and at the public hearing. In addition, prior to the drafting of the proposed rules, all gaming tribes were asked to provide comments on the meaning of the term, ''self-regulating'', which the Commission has also considered. Below is the Commission's analysis of the comments received during the comment period and the text of the final regulations.

General Comments

One commenter advocated for negotiated rule making in the promulgation of these regulations. The Commission concluded that negotiated rule making would not allow the Commission to issue these regulations in a timely manner. However, the regulated community was provided several opportunities to comment on both the concept of self-regulation generally and the proposed regulations specifically. On November 13, 1997, the Commission sent a ''Notice to Interested Parties'' to all gaming tribes requesting comments on the meaning of the term, ''self-regulation.'' In addition, on November 18, 1997, NIGC Chairman Tadd Johnson addressed a gathering of tribes in Santa Fe, New Mexico, where he discussed self regulation. Further, on January 27, 1998, members of the Commission staff met with tribal representatives in Washington, D.C. to discuss the concept of self-regulation. In early February 1998, Commission staff held an open meeting at the Gila River reservation in Arizona for the purpose of discussing self-regulation and other regulations. Then, on April 1, 1998, the Commission held a public hearing on self-regulation in Portland, Oregon. Seven witnesses testified, representing tribes with both large and small gaming operations.

Another commenter stated that ''IGRA prohibits the NIGC from regulating Class II gaming by Tribes with certificates,

and regulations that provide for continued NIGC regulation of Class II gaming by certified tribes violate IGRA.'' This and other commenters believe that, at a minimum, the regulations should spell out the powers of the Commission that are not enforceable against certified tribes.

The IGRA does not provide for a blanket prohibition on the regulatory power of the Commission with respect to a self regulated tribe. The Commission will continue to maintain oversight, investigative, and enforcement responsibilities with respect to tribes that hold certificates of self-regulation. The IGRA does limit the powers of the Commission with respect to self-regulating tribes, but does so in very specific terms. It states that ''During any year in which a tribe has a certificate for self-regulation, the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 2706(b) of IGRA.'' 25 U.S.C. 2710(c)(5)(A). Those sections direct the Commission to monitor class II gaming on a continuing basis; inspect and examine class II gaming premises; conduct or cause to be conducted background investigations; and permit the Commission to demand access to and inspect, examine, photocopy and audit all papers, books, and records regarding revenues of class II gaming. Therefore, while the IGRA exempts certain self regulated tribes from these provisions, other requirements of IGRA and NIGC regulations still apply. The Commission has added the following language to § 518.9 , which provides that the Commission retains investigative and enforcement authority over self regulated tribes: ''Subject to the provisions of 25 U.S.C. 2710(c)(5)(A).''

One commenter suggested that regulations are not required to implement IGRA's certificate of self-regulation provision. This commenter expressed the opinion that the statute is sufficient, wherein Congress set forth the requirements for certificates, and gave the Commission the power to hear and adjudicate petitions.

The Commission disagrees. Section 2706(b)(10) of IGRA grants the Commission the power to ''promulgate such regulations and guidelines as it deems appropriate to implement the provisions of the IGRA.'' While the statutory language in IGRA provides some guidance on Congress's intent with respect to self-regulation, the Commission must promulgate these rules in order to establish a system by which the Commission may evaluate whether a tribe has met the statutory criteria for the issuance of a certificate of self-regulation.

Several commenters suggested that the Commission should ensure that tribes with certificates pay less fees than tribes without certificates, and that the regulations should reflect this. These commenters believe that because the fee rate for all class II gaming tribes is currently set at .08%, well below the .25% maximum allowed for a self-regulated tribe, there is no incentive to become self-regulated.

The Commission agrees, as a general matter, that tribes with certificates should pay a lower fee than tribes without certificates. The IGRA provides that the Commission may not assess a fee on the class II gaming activity of a tribe with a certificate in excess of 0.25 percent. 25 U.S.C. 2710(c)(5)(C). Therefore, the Commission plans to establish fee rates for self-regulated tribes through the annual fee notice which will recognize and reward self regulated status.

Another commenter suggested that the following language in the preamble to the proposed regulations is too restrictive: ''The regulatory entity should have no involvement in the operational or managerial decisions of a gaming facility, except to the extent that the regulatory body identifies violations of federal or tribal law.'' 63 FR 12319, March 12, 1998.

Although this language may be broader than intended, the Commission wanted to clarify that the tribal regulatory body should not operate or manage the gaming facility. The tribal regulatory body should be an arm of the tribal government, established for the exclusive purpose of regulating and monitoring gaming on behalf of the tribe. Effective regulatory oversight requires that there be a separation between the regulation and operation of the tribal gaming activities. The tribal regulatory body may monitor all operating and management functions, consistent with its regulatory responsibilities.

Section 518.1 What Does This Part Cover?

A commenter suggested that a certificate should be issued to each separate operation, not to the tribe as a whole. The rationale behind this suggestion is that one tribe may have several operations which could cause the delay of certification for all operations due to problems with just one.

The Commission disagrees. A certificate of self-regulation issues to the tribe, in recognition of their ability to regulate effectively. If a tribe cannot effectively regulate some portion of its gaming operation, it has not demonstrated that it is able to effectively regulate all gaming operations.

Section 518.2 Who May Petition for a Certificate of Self-Regulation?

Two commenters suggested that § 518.2(a) would restrict self-regulation status to only those specific class II games actually played by the tribe for three years prior to its petition, and would effectively place a ban on new games.

The Commission does not intend this language to limit the introduction of new games. The language in § 518.2(a) mirrors the language in IGRA, which provides, in relevant part, that ''Any Indian tribe which operates a class II gaming activity and which has continuously conducted such activity for a period of not less than three years * * *'' may petition for a certificate of self-regulation. 25 U.S.C. 2710(c)(3)(A). Therefore, the petitioning tribe must have operated some type of class II gaming activity for the three year period immediately preceding the date of the petition. To interpret the statute to mean that a self-regulating tribe could not introduce new games that were not offered during that three year period would, as noted by the commenter, be so impractical as to render certificates of self-regulation useless. The Commission does not believe that Congress intended such a result. The Commission does not believe that this section requires any change.

One commenter stated that the word ''continuously'' in § 518.2(a) needs clarification. This paragraph requires that, in order to petition for a certificate, the tribe has continuously conducted the gaming activity for which it seeks self-regulation. The commenter stated that some tribes may temporarily shut down their gaming operations due to construction or to the seasonal nature of their business.

The term ''continuously'' is taken directly from IGRA at 25 U.S.C. 2710(c)(3)(A). The Commission will implement the common sense definition of the term ''continuous''. Webster's Ninth New Collegiate Dictionary defines continuous as ''marked by uninterrupted extension in space, time, or sequence''. The Commission does not believe that Congress intended to mean that if a gaming operation closed for one day or one week, that the tribe would be precluded from obtaining a certificate of self regulation. A tribe would, however, be precluded if the operation had closed for one year. The Commission intends to look at each situation on a case-by-case basis.

Several commenters stated that § 518.2(b) and § 518.2(d), which require all gaming engaged in by the tribe to be legal under IGRA, unnecessarily place a tribe's class III gaming operation under scrutiny.

The Commission disagrees. The language of § 518.2(d) is taken verbatim from IGRA, which requires, in relevant part, that a tribe may petition the Commission for a certificate of self-regulation if it ''has otherwise complied with the provision of this section.'' 25 U.S.C. 2710(c)(3)(B). The statutory language is clear. If Congress had intended for a tribe to be able to petition for a class II self-regulation certificate regardless of whether it had complied with the law with respect to its class III gaming, it would have said so.

Section 518.3 What Must a Tribe Submit to the Commission as Part of its Petition?

One commenter suggested that the petition should be approved by the tribal regulatory body, not the governing body of the tribe as required by § 518.3(a)(1), because the regulatory functions of the tribal regulatory body must be independent from the influences of the tribal government.

The Commission agrees that the tribal regulatory body must be independent from the tribal government. However, the tribal regulatory body is an arm of the tribal government. The final authority and responsibility over gaming and its tribal regulation is vested with the tribe. The authority to establish a regulatory structure or tribal regulatory body comes from the sovereign powers of tribal governments. Furthermore, a tribe's qualification for certification is dependent in part upon whether it follows procedures which are beyond the scope of the tribal regulatory body. Therefore, the Commission does not believe, as suggested by the commenter, that the decision to submit a petition for a certificate of self-regulation is a decision that should be made by the tribal regulatory body. The decision to petition for self-regulation status is a decision to be made by the tribe. The tribe may, however, delegate such authority to the tribal regulatory body.

One commenter stated that it was unclear whether § 518.3(a)(1)(iii), which requires a description of the process by which positions on the tribal regulatory body are filled, applies to positions for Gaming Commissioners and Attorneys. Another commenter recommended that this paragraph be expanded to require job descriptions and qualifications, as well as any disqualifying criteria.

This paragraph requires a description of the manner in which all positions on the tribal regulatory body are filled, including staff and higher level regulators. Therefore, this provision applies both to those who actually sit on the regulatory body, such as the Chairman, Gaming Commissioners or the Executive Director, and to all staff level employees, including investigators, auditors, attorneys, etc. In order to clarify this requirement, the Commission has revised § 518.3(a)(1)(iii) to read as follows: ''a description of the process by which all employee and regulator positions at the independent tribal regulatory body are filled, including qualifying and disqualifying criteria.'' During its investigation, the Commission may request job descriptions, but that information is not required to be provided with the petition.

The Commission has added the following language to § 518.3(a)(1)(v): ''and, if serving limited terms, the expiration date of such terms.''

One commenter questioned why the Commission requires a list of current gaming operation division heads to be submitted with the petition under § 518.3(a)(1)(vi). This information will identify for the Commission who is in charge of each division so that the Commission will know who to contact for information during the course of the investigation. In addition, the Commission may check this against the information the Commission has previously received from the tribe.

One commenter noted that several paragraphs of § 518.3 require the tribe to include in its petition, or make available to the Commission, information dating back three years from the date of the petition. This commenter suggested that the IGRA only requires that certificates be based on ''available information'', not new special information designed solely for certificates of self-regulation. This commenter raised specific concerns with respect to § 518.3(a)(2)(v). Another commenter stated that to require tribes to have reports on internal controls is overburdensome and not required by IGRA. Both commenters noted that the three year requirement is retroactive and therefore places an undue burden on tribes because they will be denied self regulation status if they are unable to produce the reports. Another commenter stated that § 518.3(a)(2)(v) should be clarified to indicate what constitutes a ''report on internal controls based on audits of the financial statements.'' This commenter questioned whether this refers to compliance reviews by the tribal regulatory body, or to responses by the operator to the annual financial audits.

The Commission believes that generally, the information required by § 518.3 is not ''new special information designed solely for certificates'', but is information that should already be maintained in the ordinary course of business by a ''self-regulating'' class II gaming tribe. For instance, if a tribe does not ordinarily maintain information on allegations of criminal activity and information on investigation and enforcement of tribal gaming ordinance violations, the Commission believes that such tribe is not maintaining the type of system of records that would allow the Commission to make a determination that such tribe is self-regulating. The Commission agrees that tribes may not receive or produce reports on internal controls in the ordinary course of business, and that it would be unfair to make the existence of such reports a prerequisite to self regulation. However, the Commission believes that if such reports do exist, they would provide an indication that the tribe meets the criteria for self regulation. Therefore, the Commission has removed this as a requirement under § 518.3, and has added a new section (9) to § 518.4(b). This new section provides that the Commission will consider whether reports are received or produced by the tribe, the tribal regulatory body, or the gaming operation based on an evaluation of the internal controls of the gaming operation during the three (3) year period immediately preceding the date of the petition. If such reports exist, the Commission will review those reports in the course of its investigation. This new language should help to clarify what constitutes a ''report on internal controls''.

Several commenters questioned whether the language in § 518.3(a)(2) requires the tribe to list the documents in the petition that would then be available to the Commission to inspect or whether those documents were to be submitted to the Commission.

The Commission intends only for the petition to include a descriptive list of the documents or record keeping systems described in §§ 518.3(a)(2)(i)–518.3(a)(4) and an assurance that the listed documents and records are available for the Commission's review. (The documents mentioned in §§ 518.3(a)(1)(i)–(vii), however, must be included with the petition.) Therefore, the Commission revises this section to add ''descriptive'' before ''list'' and to replace, ''to which the Commission shall have access'' with ''together with an assurance that the listed documents

or records are available for the Commission's review.''

One commenter was concerned about § 518.3(a)(2)(ii), and indicated that tribal regulatory bodies are not ordinarily involved in any way with a tribe's revenue allocation plan, and it is not apparent how a tribe's revenue allocation plan bears on the Commission's evaluation of a tribal regulatory body's qualification for certification.

It is the tribe, not the tribal regulatory body, that is the petitioner and the intended recipient of a certificate. For the Commission to determine adequately whether the gaming activity has been conducted in full compliance with IGRA, as required by § 518.4(a)(4), the Commission must be able to evaluate whether gaming revenues are allocated in accordance with the law.

One commenter questioned whether § 518.3(a)(2)(iii) requires a description of the accounting system from the operation, the tribal government, or both if two separate accounting systems exist.

This provision refers to the accounting systems of both the gaming operation and the tribe. The latter is necessary to understand how the tribe uses and accounts for the revenues received from the gaming operation in accordance with the purposes allowed under IGRA. Because the proposed rule may be confusing, the Commission revises the language to read, ''A description of the accounting system(s) at both the gaming operation and the tribe that account for the flow of gaming revenues from receipt to their ultimate use, consistent with IGRA.''

One commenter stated that a definition of ''records'' is needed. This commenter questioned whether, under § 518.3(a)(2)(vii), a summary of the investigation/enforcement action would be sufficient. This and other commenters indicated that some allegations are made outside tribal jurisdiction, and that it would be burdensome to require the tribal regulatory body to assemble documents from third parties. A commenter also questioned the meaning of ''records'' under § 518.3(a)(2)(vii).

The Commission recognizes that several paragraphs of § 518.3(a)(2) are confusing in terms of what information should be provided to the Commission. First of all, the tribe is not required to submit the actual documents, nor does the Commission intend by this rule to require a tribe to gather records from other jurisdictions or parties. The rule states that the documents that are to be made available to the Commission are documents that are maintained by the tribe. With respect to the ''records'' language, the Commission made the following changes: to § 518.3(a)(2)(vi), delete ''records of'' and add, ''a description of the record keeping system for'' before the word ''all'; to § 518.3(a)(2)(vii), delete ''records of'' and add, ''a description of the record keeping system for'' before the word ''all''; and to § 518.3(a)(2)(viii) delete ''records'' and add, ''a description of the personnel record keeping system'' before the word ''of''. Section 518.3(a)(2)(vii) includes all records maintained by the tribe, not just by the tribal regulatory body. This would include records maintained by the tribal prosecutor and tribal court.

To further clarify that the information required under § 518.3(a)(2) is to be provided by way of a list instead of the actual documents, the Commission has removed, ''including the name, title, and licensing status of each employee'' from § 518.3(a)(2)(viii). The tribe is required, under this paragraph, to provide a description of its personnel record keeping system, and is not required to specifically provide the names, titles, and licensing status of each employee. This is information that the Commission will gather when it visits the tribe to conduct its investigation, or will request at a later date.

Additional clarification was made to § 518.3(a)(2)(vi) and § 518.3(a)(2)(vii). In § 518.3(a)(2)(vi), the language ''for the three (3)-year period immediately preceding the date of the petition'' was removed from the beginning of the paragraph and inserted after the word, ''activity''. In § 518.3(a)(2)(vii), the language ''for the three (3)-year period immediately preceding the date of the petition'' was removed from the beginning of the paragraph and inserted after the word ''regulations.'' These changes were made to clarify that the three year period refers to the records that the Commission will have access to, and not to the description of the record keeping system.

With respect to § 518.3(a)(2)(viii) one commenter noted that while the IGRA requires a tribe to license certain key employees there is no requirement that it maintain records of all employees as required by § 518.3(a)(2)(viii). This commenter believes that to require a tribal regulatory body to gather this information if it does not have it distorts the Commission's evaluation, in that the Commission will not know if this information is normally known to the tribal regulatory body, as it should be, or whether it was gathered in preparation for the petition.

The purpose of this rule is to allow the Commission to evaluate whether the tribal gaming operation maintains an adequate personnel system with records of all employees, as well as whether the tribe has complied with IGRA and NIGC regulations which require the tribe to submit to the Commission employee applications and background investigation reports for all key employees and primary management officials. The Commission must be able to check the records of all current employees against the employee applications and background investigation reports submitted to the Commission to determine whether the tribe has complied with IGRA. Although only key employees and primary management officials must be investigated and licensed under IGRA, the Commission believes the tribal gaming operation should maintain an adequate system of records for all employees, and the tribe may license other employees not specifically required to be licensed under IGRA.

One commenter pointed out that § 518.3(a)(3), which requires the tribe to submit a copy of the public notice references an incorrect citation to the provision which requires the public notice.

The Commission agrees. The reference to the public notice requirement should read ''25 CFR 518.5(d)'' instead of ''25 CFR 518.5(e).'' The Commission will make this change. In addition, the Commission has removed the requirement that the tribe, upon publication of the notice, submit a copy of the notice. The final regulation has been revised to require the tribe to submit an affidavit of publication in lieu of a copy of the publication.

One commenter stated, in regard to § 518.3(a)(4), that federal regulations governing the audit of tribal general funds and federal funds do not require the auditor to express an opinion on compliance with 25 U.S.C. 2710(b)(2)(B), and the proposed rule does not expressly contain a new substantive requirement for tribal audits. In addition, such a requirement could only be imposed prospectively.

The Commission agrees, and has removed this paragraph from § 518.3(a)(4). However, 25 U.S.C. 2710(b)(2)(B) requires that tribal gaming revenues be put to specific purposes. Therefore, the Commission adds a new paragraph to the section which describes the documents that should accompany the petition. The new paragraph is § 518.3(a)(1)(vii), and states ''A report, with supporting documentation, including a sworn statement signed by an authorized tribal official, which explains how tribal net gaming revenues were used in

accordance with the requirements of 25 U.S.C. 2710(b)(2)(B).'' Supporting documentation would include copies of pages from tribal accounting books which record the flow of money from the gaming operation to its ultimate use. One commenter questioned why the Commission would need to have access to the tribal audit under § 518.3(a)(2)(xi) in order to evaluate a tribe's qualification for certification. Because the new paragraph at § 518.3(a)(1)(vii) serves to inform the Commission of information it intended to glean from the tribal government audits, and because the Commission does not believe it necessary to review audits prepared of the tribal regulatory body, the Commission has removed § 518.3(a)(2)(xi) in its entirety.

Section 518.4 What Criteria Must a Tribe Meet To Be Issued a Certificate of Self-Regulation?

Several commenters pointed out that the proposed regulations state that the Commission ''may issue a certificate of self-regulation * * * .'' whereas IGRA provides that the Commission ''shall issue a certificate if the petitioning tribe meets the requirements.

The Commission recognizes this error and has changed the language in § 518.4(a) from ''may issue'' to ''shall issue''.

One commenter questioned the use of the words ''honest'' and ''dishonest'' in §§ 518.4(a)(1)(i)–(iii), and stated that, by this language, the Commission was creating a subjective criteria. This commenter questioned whether the Commission would look at actual criminal charges, or rely on mere word of mouth.

The language of this paragraph was taken verbatim from IGRA at 25 U.S.C. 2710(c)(4)(A). The Commission has created, by these regulations, a system for the evaluation of these and other statutory criteria. Section 518.4(b) provides several methods for establishing, by supporting documentation, that a tribe operates its gaming in a manner that satisfies the statutory criteria, including the ''honesty'' requirement mentioned in the statute.

One commenter recommended that the language of § 518.4(a)(2) be changed from ''Adopted and is implementing adequate systems'' to ''Adopted and has implemented adequate systems * * *'' This commenter believes that a gaming operation that has been in operation for three years should be required to have implemented the adequate systems, not be in the process of doing so.

The language the Commission used in § 518.4(a)(2) was taken directly from IGRA at 25 U.S.C. 2710(c)(4)(B). IGRA requires that the tribe has conducted its gaming for at least three years, and further requires that the tribe has adopted and is implementing adequate systems for accounting of revenues, investigation of violations, etc. Therefore, it only makes sense that those systems must have been in operation for at least three years, and that the tribe continues to implement those systems. The Commission does not read the language of the statute to mean that the tribe can qualify for a certificate if it is merely in the process of developing and implementing adequate control systems.

One commenter suggested that § 518.4(a)(4) could be construed to suggest that a tribe may not qualify as a result of a single minor violation, even if tribal authorities took prompt remedial action.

The Commission agrees that the language of proposed § 518.4(a)(4) creates an unreasonably high standard. Therefore, ''full'' has been deleted from this paragraph to allow the Commission the authority to determine whether or not violations are sufficiently serious to prevent a determination that a tribe is self-regulating.

One commenter suggested that the language of § 518.4(b)(1) should be read to mean that the tribally adopted minimum internal control standards do not necessarily have to be at least as stringent as Commission standards, or those of Nevada or New Jersey. This commenter believes that the test for receiving a class II certificate focuses on whether a tribe has achieved substantive compliance with IGRA, not on whether the Tribe's internal controls are at least as stringent as an externally promulgated standard adopted by the Commission. This commenter further believes that interim reliance on New Jersey or Nevada standards is flawed because those states did not adopt their minimum internal control standards based on IGRA's requirements for self-regulation.

The Commission disagrees with the commenter and believes that uniform standards are necessary for the industry. Minimum internal control standards commonly address categories of games and specific operational functions of gaming operations. Therefore, there is no immediate requirement for MICS based on standards that are specifically designed with IGRA in mind. The Commission has chosen the Nevada and New Jersey MICS as interim MICS because both have been in existence for a number of years and are regarded as comprehensive and effective standards. We note, however, that the State of Nevada is exempt from the currency transaction reporting required by the Bank Secrecy Act. Therefore, if Tribes adopt the Nevada MICS, they must modify them to comply with that Act. Furthermore, Commission regulations adopting MICS are currently being developed and promulgated by the Commission.

Another commenter suggested that the NIGC should include the minimum internal control standards provided to the NIGC by the National Indian Gaming Association (NIGA) as standards that a tribe may use until the Commission promulgates its own standards.

NIGA and the National Congress of American Indians have certainly set the standard for promoting the concept of internal controls and uniform MICS. The Commission commends them on the work done thus far in drafting uniform MICS. Those MICS, however, are still evolving and have not been adopted in final form. Therefore, the Commission believes it would be inappropriate to rely on those MICS at this time.

One commenter suggested that while several paragraphs of § 518.4(b)(3) indicate that the tribal regulatory body should be adopting and establishing a variety of standards for the operation of the gaming activity, some tribal regulatory bodies do not adopt these types of standards, but that such responsibility lies with the tribal council. This commenter suggested adding the language, ''if it does not already exist in the tribe's gaming ordinance'' to each subsection of § 518.4(b)(3) that indicates that the tribal regulatory body would be the entity to adopt or establish standards.

The Commission generally believes that the responsibility for the adoption and establishment of rules and standards for the operation of the gaming activity should be a function of the tribal regulatory body. Such responsibility would be evidence that the tribal regulatory body was functioning independently of the tribal council. In most governmental systems, regulatory agencies promulgate their own rules. However, the Commission will not deny a petition solely because a tribal council is responsible for the adoption of gaming rules, so long as there is evidence that the tribal regulatory body is nonetheless functioning independently. Because this paragraph deals with ''indicators'' that a tribe has met the self-regulation criteria, and not requirements, the Commission believes that revision is unnecessary.

One commenter noted that while § 518.4(b)(3)(iv) suggests that the tribal regulatory body performs routine audits

of the gaming operation, some tribal regulatory bodies may not perform financial audits independently of the annual audit required by IGRA, but may perform operational audits on a periodic basis. This commenter suggested adding ''operation or other'' after the word ''routine''.

The Commission agrees, and made the following change: The Commission has added ''operational or other'' after ''routine''.

One commenter suggested that some tribes do not require non-gaming employees to be licensed, and that the use in § 518.4(b)(3)(ix) of the language, ''all employees of the gaming activity'', suggests that all employees must be licensed, regardless of whether they work directly with the gaming activity. This commenter suggested that the language be amended to reflect that only those employees required to be licensed under IGRA or tribal law should be required by the tribal regulatory body to be licensed.

The Commission disagrees. Section 518.4(b) makes clear that the paragraphs that follow describe ''indicators'' that the Commission may evaluate to determine whether a tribe has met the criteria for self-regulation. These are not requirements that must be met in every instance. That said, the Commission would prefer that a tribal regulatory body, of its own accord, require licenses for all employees involved in the gaming activity, not just the key employees and primary management officials required by IGRA.

Vendor Licenses

A commenter suggested that § 518.4(b)(3)(xii) could be read to mean that the Commission would consider whether the tribal regulatory body issues licenses to all vendors that it deals with, including vendors of non-gaming related services, equipment and supplies. This commenter proposed amending this paragraph to add, ''on matters that may affect the honesty and integrity of the gaming activity'' after the word, ''operation.''

The Commission disagrees. Corrupting influences, which the IGRA was designed to prevent from infiltrating Indian gaming, and which can negatively affect the honesty and integrity of the gaming activity, can get a foothold through various vendor/vendee relationships. The Commission will consider, therefore, the extent to which the tribe investigates and issues licenses or permits to the people or organizations it does business with. This should not be read to mean that the tribe must be in the practice of issuing licenses to each and every entity it deals with, such as utility companies, but should have reasonable vendor licensing standards in place.

Posting of Rules of Games

A commenter stated that § 518.4(b)(3)(xiii), which provides that the Commission will consider whether the independent tribal regulatory body establishes or approves, and posts, rules of games, it too stringent. First, it does not recognize that some tribes require the gaming operation, not the regulatory body, to post rules, and second, that some game rules are too lengthy to post, but may be made available upon demand.

The Commission agrees with the first comment, and has revised the language to read, ''establishes or approves, and requires the posting of, rules of games.'' With respect to the second comment, the Commission believes that all rules should be posted, regardless of their length. However, because the posting of rules of the game is an indicator of self regulation, and not a requirement, the fact that a tribe does not post all rules, but makes some lengthy rules available upon demand, will not necessarily result in the denial of a certificate.

Video Surveillance

A commenter stated that with respect to § 518.4(b)(3)(xvi) some small operations may not require video surveillance, and that this paragraph should be amended to read, ''where video surveillance is required.''

As indicated earlier § 518.4(b) sets forth indicators that the Commission will consider when evaluating a petition. The Commission recognizes that operations vary in type and size, and a rigid set of rules would be unworkable. While the Commission favors the use of video surveillance, the small size of an operation, and its ability to otherwise effectively regulate the gaming activity, may mitigate against its use of video surveillance. The Commission will evaluate the need for video surveillance on a case-by-case basis.

Dispute Resolution Procedures

One commenter suggested that § 518.4(b)(3)(xviii), which provides that the Commission will consider whether adequate dispute resolution procedures exist, would require a tribe to waive its sovereign immunity. Another commenter suggested that a regulation requiring dispute resolution is not appropriate at this time.

The Commission disagrees. The Commission is not requiring that a tribe consent to be sued in order to obtain a certificate. The Commission will, however, consider whether there is an adequate system of dispute resolution. This could involve mediation or arbitration, in addition to a process for hearings before the tribal regulatory body, and a process for appeals to tribal court. Tribes are already required by 25 CFR 522.2(f) to have a description of procedures for resolving disputes between the gaming public and the tribe or the management contractor. Disputes between gaming employees and tribes has been an on going concern in Congress and in the public. This provision will enhance the perception that the gaming operation is run fairly and honestly. A dispute resolution process in no way imperils the sovereign immunity status of a tribe. Furthermore, there are certain times when a waiver of sovereign immunity may be warranted. For example, the United States has waived its immunity from suit under the Federal Tort Claims Act for suits against tortious acts of federal employees and tribal employees employed under the Indian Self-Determination Act.

Financial Stability

A commenter stated that § 518.4(b)(6), which provides that the Commission will consider the financial stability of the operation, is unworkable. This commenter believes that financial stability is not a useful measure of a tribe's ability to self-regulate because it may reflect only fluctuations in the market or changes in tribal policy to achieve legitimate governmental objectives, such as providing jobs for the community.

The financial stability of the operation is one of several indicators the Commission will evaluate. The Commission recognizes that the economic impact of tribal gaming operations can accrue to a tribe in various ways. While in many cases the primary economic benefit may be profits generated for the support of the tribal purposes specified in IGRA (25 U.S.C. 2710(b)(2)(B)), such as further economic development or the general welfare of the tribe, in other instances employment generated for tribal members by the gaming operation may be the primary economic benefit. Notwithstanding the extent of the operation's profitability, the operation must be adequately funded, by gaming revenues or other infusions the tribe may elect to provide, so that all required safeguards are maintained and standards are met. While the temporary fluctuation of some market conditions will be taken into consideration, in instances where financial instability poses a long-term threat to compliance with required

standards, self regulation certification will be withheld.

Clarification of § 518.4(d)

The Commission has added the language, ''During the review of the petition, '' to the beginning of § 518.4(d) to clarify when the provisions of this paragraph apply.

Section 518.5 What process will the Commission use to review petitions?

One commenter suggested a peer review process for the evaluation of petitions, with a team of people including those with Indian gaming regulatory experience, Commission staff, and outside auditors and consultants.

A peer review process may be an appropriate mechanism for evaluating petitions. The regulations do not have to mandate such a process, however, before the Commission can implement it. Furthermore, The Commission anticipates that it can, with the expansion of staff in the near future, adequately evaluate petitions for self-regulation. If the Commission finds it necessary and economical to contract for outside assistance or expertise to assist the Commission, it will do so.

A commenter stated that the NIGC should provide consultation and technical assistance to tribes to help them through the process.

The Commission intends to assist tribes in understanding and complying with all Commission regulations.

Establishment of Office of Self Regulation

To stream line the review process, the Commission has created an ''Office of Self Regulation'' (OSR). The Chairman of the Commission shall appoint one Commissioner to administer this office. The OSR will be responsible for the review and investigation process and will issue a report of its findings to the tribe. It will also issue certificates of self regulation, conduct hearings and issue decisions following those hearings. Those decisions will then be appealable to the full Commission, which shall decide the appeal based on the record. The tribe may request reconsideration by the full Commission of a denial of a petition. This process differs somewhat from the process described in the proposed rule. However, it provides an additional opportunity for tribes to challenge adverse decisions. The proposed rule provided for all determinations to be made by the Commission after an opportunity for a hearing, with the full Commission issuing a final decision on the petition. That decision was then subject to reconsideration. The process in these final regulations provides for initial decisions to be made by the Office of Self Regulation, after the opportunity for a hearing. Those decisions are then appealable to the full Commission, whose decision is then subject to reconsideration. Therefore, the tribe has the benefit of three levels of scrutiny of their petition instead of two.

Technical Changes

The Commission has combined the provisions of proposed §§ 518.5(e) and (f) into a new section 518.5 (e)(1) and (2) and renumbered the subsequent subsections. In addition, the Commission has added language to § 518.5(e)(1) which clarifies that, if the Office of Self Regulation determines that the tribe has satisfied the criteria, it shall so indicate in its report and shall issue a certificate.

The Commission has also inserted ''from the date of service of the report'' into § 518.5(e)(1) after ''the tribe shall have 60 days''. This relates to the deadline for submission of the tribe's written response, and clarifies when the 60 day time period starts.

Commission Deadlines

Several commenters requested express deadlines imposed on the Commission to complete the certification process. Commenters felt that IGRA does not give the Commission unlimited time to act upon a petition, and to be consistent with IGRA, regulations should impose meaningful restrictions on the time allowed the agency to decide petitions. A commenter also feels that the regulations should provide for a tribe to request a hearing at the time of the petition. One commenter suggested that the hearing should be scheduled for within 30 days of the request for a hearing, while another commenter suggested that the hearing should be held within 60 days of the date the Commission acknowledges the request for a hearing. One commenter suggested that § 518.5(i) should impose a deadline of 30 days following the hearing for the Commission to issue its decision, while another commenter suggested a 60 day deadline, and that if the Commission does not issue a decision within 60 days, the petition should be deemed approved. Without such a provision, the commenter is concerned that the Commission will not have incentive to complete its review in a timely manner.

While time frames can sometimes assure a more timely decision, the self-regulation process is a new, unique, and very important process. Thus, the Commission is not prepared to determine that 30–60 day time periods would be reasonable.

Timing of Request for Hearing

With respect to the right to a hearing, the regulations provide that the hearing can be requested at the time of a tribe's submission of its response to the Commission's report, instead of at the submission of the petition. The Commission designed the process this way because if the Commission issues a report that is favorable and indicates that it will issue a certificate, a hearing would be unnecessary. It is only after the Commission's report is issued that the need for a hearing will be evident. In the interest of time and expense for both the tribe and the Commission, the Commission will only honor a request for a hearing after the issuance of the Commission's report.

Information From Interested Parties

Two commenters suggested that § 518.5(c), which provides that the Commission may consider any evidence submitted by interested parties, could elicit a variety of inaccurate or incomplete responses from third parties. Both commenters further stated that any information obtained must be available for review by the Tribe, which should also have an opportunity to respond and to correct inaccurate or incomplete information before the Commission makes a final decision on the petition.

An important part of the process of determining a tribe's ability to self-regulate is the evaluation of information provided by individuals and entities in addition to information provided by the Tribe. The Commission will fully investigate any negative information, and will afford the Tribe a timely opportunity to respond to all such information on which it relies in making a determination. Therefore, the Commission has added the following language to § 518.5(c), ''The Commission shall make all such information on which it relies in making its determination available to the Tribe, and shall afford the Tribe an opportunity to respond.''

Public Notice Requirement

One commenter stated that negative backlash could result if the Tribe is required to publish the notice required by § 518.5(d) in a non-tribal newspaper.

This paragraph implements 25 U.S.C. 2710(c)(4)(A)(ii), which requires the Commission to determine if the Tribe has conducted its gaming in a manner which has resulted in a reputation for safe, fair, and honest operation of the gaming activity. To determine reputation, the Commission must

consider public opinion. The Commission understands the concern raised by this commenter and will give each response to the public notice its due weight. Sweeping criticism of Indian gaming will not be considered by the Commission in making its determination. The Commission is only interested in comment on specific issues relative to the Tribe's reputation for providing a safe, fair, and honest gaming environment.

Another commenter suggested that a better source of information would be the local United States Attorney for the district where the tribal gaming is operated, the Federal Bureau of Investigation, local police and the State's gaming regulatory agency.

The Commission agrees that these agencies may have information on the effectiveness of a particular Tribe's gaming regulation. During the course of its investigation of the petition, the Commission may confer with these agencies. Nonetheless, it is important for the general public to be aware of the Tribe's petition and to afford the public an opportunity to comment.

Final Agency Action

One commenter stated that § 518.5 should state expressly that the decision of the Commission to approve or deny a petition is a final agency action under 25 U.S.C. 2714.

The Commission agrees that the decision to approve or deny a petition is a final agency action, and that the decision to deny a petition is appealable under 25 U.S.C. 2714. The Commission therefore adds a new section 518.5(j) which states, ''The decision of the Commission to approve or deny a petition shall be a final agency action. A denial shall be appealable under 25 U.S.C. 2714, subject to the provisions of § 518.12. The Commission decision shall be effective when the time for the filing of a request for reconsideration pursuant to § 518.12 has expired and no request has been filed.''

Section 518.6 When will a certificate of self-regulation become effective?

Several commenters have argued that to require tribes to wait until the beginning of the next year for a certificate is unfair. Several commenters have argued that certificates should be made effective immediately, and one commenter has suggested a 30 day effective date. Another commenter suggested that certificates should become effective on the first day of the next quarter following the date the petition is granted. Still another commenter suggested that the Tribe should be permitted to choose which date their certificate becomes effective. One commenter points out that IGRA provides that ''during any year in which a Tribe has a certificate of self-regulation'' it is not subject to 25 U.S.C. 2706(b) and, in addition, the Commission may not assess a fee in excess of one quarter of one percent. This commenter believes that the proposed regulations directly contravene this language.

The Commission has concluded that the approach most clearly aligned with the statute is to provide for a January 1st effective date, with all benefits inuring to the tribe from that date forward. Self regulation status confers two types of benefits upon a tribe that holds a certificate; financial and a reduced regulatory role for the Commission with respect to that tribe. IGRA provides that ''during any year in which a tribe has a certificate'' it shall reap those benefits. 25 U.S.C. 2710 (c)(5). This language is ambiguous, as the reduction in the Commission's regulatory role can only apply prospectively, whereas the financial benefit is capable of retroactive application. The Commission powers apply only prospectively because the Commission will have already taken action before the determination on self regulation was made. Those actions can not be undone. Although the ''during any year'' language can be interpreted to mean ''for the entire year'', which would support an argument in favor of retroactive application of the financial benefits, it does not make sense to intepret the statute one way with respect to regulatory authority and another with respect to the financial incentive. Furthermore, the establishment of a January 1st effective date is consistent with Commission regulations and does not create an undue financial burden on tribes. For example, if a tribe applies in 1999 and a certificate is issued and made effective January 1, 2000, fee payments made by the tribe in 1999 would have been based on 1998 revenues pursuant to Commission regulations. Current fee regulations provide that fees are calculated based on the previous year's revenues. *See* 25 CFR 514.1(c)(5)(ii).

Furthermore, the establishment of a January 1st effective date is the most practical approach for the Commission to take. Fees are paid to the Commission quarterly based on the prior year's revenues. It would be impractical for the Commission to determine, on a case by case basis, what each self regulating tribe owes for the part of the year in which it was not self regulating, and how much it owes for the part of the year that it is self regulating. In addition, the Commission's budget is determined each year based on the amount of fees collected. If fees already paid were rebated based on a retroactive application of the statute, the budgetary process would be in a constant state of flux. This would make it difficult for the Commission to determine the amount of money available at any point in time to carry out its statutory duties.

The Commission has established a schedule for the submission of petitions that should ease the process and provide guidance to tribes. The process is as follows: To be considered for issuance of a certificate the following January, complete petitions are due no later than June 30 (Pursuant to § 518.5(b), the Commission shall notify a tribe, by letter, when it considers a petition to be complete.); petitions will be reviewed and investigated in chronological order based on the date of receipt of a complete petition; and the Commission will announce its determinations on December 1 for all those reviews and investigations it completes. This process encourages submission of petitions early in the calendar year to afford the Commission enough time to review and investigate the petition and to make a determination by December 1.

The Commission recognizes that under this schedule, the earliest a certificate will be effective is January 1, 2000. However, the Commission will accept petitions for the June 30, 1999 deadline starting immediately, and once these regulations become effective, the Commission will begin the process of reviewing and investigating petitions. Furthermore, it is unlikely, based on the extent and nature of these regulations, that the Commission would complete its review and investigation of a petition in time for a January 1, 1999, effective date. In addition, this schedule does not require tribes to wait an extra year for the financial benefit of self regulation because fees are calculated each year based on the prior year's revenues. Even though tribes must wait until January 1, 2000, for the first opportunity to obtain a certificate, any fees paid in 1999 will be based on 1998 revenues.

Section 518.7 If a tribe holds a certificate of self-regulation, is it required to report information to the Commission to maintain its self-regulatory status?

One commenter stated that IGRA does not require certified Tribes to repeatedly demonstrate that they are self-regulating. This commenter believes that such a requirement would be so onerous as to make a certificate not worthwhile. Another commenter stated that the report is as complex as the

original petition, and suggested the requirement of an annual report that only documents a change in status.

The Commission agrees that IGRA does not affirmatively require certified tribes to repeatedly demonstrate that they are self-regulating. However, IGRA vests the Commission with the power to remove a certificate. 25 U.S.C. 2710(c)(6). This power would be rendered meaningless unless the Commission is routinely informed that the tribe is continuing to meet the criteria for self regulation, particularly in light of the several powers of the Commission which are abrogated by the issuance of a certificate. (See 25 U.S.C. 2710(c)(5)(A)). The Commission does, however, share the concerns of the commenters that the reporting requirement may be unduly onerous and has therefore removed the language, ''with supporting documentation'' after ''such report shall set forth information''. By removing the requirement that the tribe submit supporting documentation with its annual report, the Commission intends to make the process of completing and submitting the report less onerous. While not requiring that the tribe supplement its annual report with documentation supporting each self regulation criteria, the Commission may require the tribe to supply supporting documentation if necessary. The Commission plans to provide guidance on how to prepare the report. In addition, the Commission has added ''and shall include an annual report, with supporting documentation, signed by an authorized tribal official, which shows that tribal net gaming revenues were used in accordance with the requirements of 25 U.S.C. 2710(b)(2)(B)'' after ''approval requirements of § 518.4''. This is the same type of report the Tribe must submit with its petition under § 518.3(a)(1)(vii).

Section 518.8. Does a tribe that holds a certificate of self regulation have a continuous duty to advise the Commission of any information?

One commenter stated that the requirement that a tribe advise the Commission of circumstances that may negatively impact on the tribe's ability to self regulate could be subject to wide-ranging interpretation as to what may be a negative impact. This commenter suggested that this section require a tribe to advise the Commission of any circumstances that may reasonably impact the tribe's ability to continue to self regulate.

The Commission generally agrees with this commenter. Therefore,to clarify that the tribe has a continuing duty to advise the Commission of circumstances that may cause the Commission to review the tribe's certification, and to clean up unnecessary language, the text of § 518.8. has been modified slightly. The following changes were made: delete ''at all times after the receipt of a certificate of self-regulation''; delete ''negatively impact on the tribe's ability to continue to self-regulate'' after ''may'' and add, ''reasonably cause the Commission to review the tribe's certificate of self regulation'; and delete ''may undermine a tribe's ability to effectively regulate'' after ''factors that'' and add ''are material to the decision to grant a certificate of self regulation.'' This change clarifies that the Commission expects to be notified of any significant circumstances that may affect a tribes certificate of self regulation.

Section 518.9 Are any of the investigative or enforcement powers of the Commission limited by the issuance of a certificate of self-regulation?

One commenter suggested that the language of § 518.9 is misleading because it does not take into account the language of IGRA at 2710(c)(5)(a) which states that certain provision of IGRA do not apply to self-regulated tribes.

The Commission agrees, and therefore adds the following language to the beginning of § 518.9, '' Subject to the provisions of 25 U.S.C. 2710(c)(5)(A),''

Section 518.10 Under what circumstances may the Commission remove a certificate of self-regulation?

One commenter stated that this paragraph should indicate that a decision to remove a certificate is appealable to Federal District Court.

The Commission agrees and adds to § 518.10 the following: ''The decision to remove a certificate is appealable to Federal District Court pursuant to 25 U.S.C. 2714.''

Section 518.12 May a tribe request reconsideration by the Commission of a denial of a petition or a removal of a certificate of self-regulation?

One commenter suggested that § 518.12 should state that a request for reconsideration reopens the matter before the Commission, and that until action on the request is complete, the prior decision of the Commission is not a final agency action.

The Commission has clarified this paragraph by adding § 518.5 (j) which provides that if a request for reconsideration has been filed within 30 days of the denial or removal, the Commission's original decision is not final agency action.

The Commission has further clarified § 518.12 because it was not clear whether the Commission would decide within 30 days whether to grant the request for reconsideration, or whether the Commission would decide the request on its merits. Therefore, the Commission has added the word, ''final'' before the word, ''decision and has removed the language, ''with regard to any request for reconsideration'' from the second to last sentence. The Commission will make its final decision within 30 days.

One commenter stated that the failure of the Commission to issue a decision on reconsideration within 30 days should result in the automatic approval, not disapproval, of the request. This commenter suggests that the automatic disapproval provision discourages the timely resolution of requests for reconsideration.

The Commission disagrees. By allowing for reconsideration of a decision to deny a petition or remove a certificate, the Commission is affording a Tribe a second opportunity to make its case. There is no statutory right to reconsideration, and therefore no prescribed deadline for such decision. The Commission has, however, provided for a 30 day deadline. If no decision issues within 30 days, the Tribe will know by the 31st day that the request was not approved. There is, therefore, no real threat of continued inaction by the Commission.

Several grammatical changes were made to the proposed regulations. These changes have no substantive effect.

Regulatory Matters

Paperwork Reduction Act

On May 2, 1998, the Commission received notice that the Office of Management and Budget approved its information collection system, and assigned it number 3141–0008. This approval expires on May 31, 2001.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act.

National Environmental Policy Act

The Commission has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and

that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

List of Subjects in 25 CFR Part 518

Administrative practice and procedure, Gambling, Indians—lands, Indians—tribal government, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commission amends 25 CFR chapter III by adding part 518 to read as follows:

PART 518—SELF REGULATION OF CLASS II GAMING

Sec.

518.1 What does this part cover?
518.2 Who may petition for a certificate of self-regulation?
518.3 What must a tribe submit to the Commission as part of its petition?
518.4 What criteria must a tribe meet to receive a certificate of self-regulation?
518.5 What process will the Commission use to review petitions?
518.6 When will a certificate of self-regulation become effective?
518.7 If a tribe holds a certificate of self-regulation, is it required to report information to the Commission to maintain its self-regulatory status?
518.8 Does a tribe that holds a certificate of self-regulation have a continuous duty to advise the Commission of any information?
518.9 Are any of the investigative or enforcement powers of the Commission limited by the issuance of a certificate of self-regulation?
518.10 Under what circumstances may the Commission remove a certificate of self-regulation?
518.11 May a tribe request a hearing on the Commission's proposal to remove its certificate?
518.12 May a tribe request reconsideration by the Commission of a denial of a petition or a removal of a certificate of self-regulation?

Authority: 25 U.S.C. 2706(b)(10), 2710(c)(3)–(6).

§ 518.1 What does this part cover?

This part sets forth requirements for obtaining, and procedures governing, the Commission's issuance of certificates of self-regulation of class II gaming operations under 25 U.S.C. 2710(c). When the Commission issues a certificate of self-regulation, the certificate is issued to the tribe, not to a particular gaming operation; the certificate will apply to all class II gaming operations operated by the tribe that holds the certificate.

§ 518.2 Who may petition for a certificate of self-regulation?

A tribe may submit to the Commission a petition for self-regulation of class II gaming if, for the three (3) year period immediately preceding the date of its petition:

(a) The tribe has continuously conducted the gaming activity for which it seeks self-regulation;

(b) All gaming that the tribe has engaged in, or licensed and regulated, on Indian lands within the tribe's jurisdiction, is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by federal law), in accordance with 25 U.S.C. 2710(b)(1)(A);

(c) The governing body of the tribe has adopted an ordinance or resolution that the Chairman has approved, in accordance with 25 U.S.C. 2710(b)(1)(B);

(d) The tribe has otherwise complied with the provisions of 25 U.S.C. 2710; and

(e) The gaming operation and the tribal regulatory body have, for the three years immediately preceding the date of the petition, maintained all records required to support the petition for self-regulation.

§ 518.3 What must a tribe submit to the Commission as part of its petition?

(a) A petition for a certificate of self-regulation under this part shall contain:

(1) Two copies on 8–1/2'' X 11'' paper of a petition for self-regulation approved by the governing body of the tribe and certified as authentic by an authorized tribal official, which includes:

(i) A brief history of each gaming operation(s), including the opening dates and periods of voluntary or involuntary closure;

(ii) An organizational chart of the independent tribal regulatory body;

(iii) A description of the process by which all employee and regulator positions at the independent tribal regulatory body are filled, including qualifying and disqualifying criteria;

(iv) A description of the process by which the independent tribal regulatory body is funded and the funding level for the three years immediately preceding the date of the petition;

(v) A list of the current regulators and employees of the independent tribal regulatory body, their titles, the dates they began employment, and, if serving limited terms, the expiration date of such terms;

(vi) A list of the current gaming operation division heads; and

(vii) A report, with supporting documentation, including a sworn statement signed by an authorized tribal official, which explains how tribal net gaming revenues were used in accordance with the requirements of 25 U.S.C. 2710(b)(2)(B);

(2) A descriptive list of the documents maintained by the tribe, together with an assurance that the listed documents or records are available for the Commission's review for use in determining whether the tribe meets the eligibility criteria of § 518.2 and the approval criteria of § 518.4, which shall include but is not limited to:

(i) The tribe's constitution or other governing documents;

(ii) If applicable, the tribe's revenue allocation plan pursuant to 25 U.S.C. 2710(b)(3);

(iii) A description of the accounting system(s) at both the gaming operation and the tribe that account for the flow of the gaming revenues from receipt to their ultimate use, consistent with IGRA;

(iv) Manual(s) of the internal control systems of the gaming operation(s);

(v) A description of the record keeping system for all allegations of criminal or dishonest activity for the three (3)-year period immediately preceding the date of the petition, and measures taken to resolve the allegations;

(vi) A description of the record keeping system for all investigations, enforcement actions, and prosecutions of violations of the tribal gaming ordinance or regulations, for the three (3)-year period immediately preceding the date of the petition, including dispositions thereof;

(vii) A description of the personnel record keeping system of all current employees of the gaming operation(s);

(viii) The dates of issuance, and criteria for the issuance of tribal gaming licenses issued for each place, facility or location at which gaming is conducted; and

(ix) The tribe's current set of gaming regulations; and

(3) A copy of the public notice required under 25 CFR 518.5(d) and a certification, signed by a tribal official, that it has been posted. Upon publication of the notice in a local newspaper, the tribe shall forward an affidavit of publication to the Commission.

§ 518.4 What criteria must a tribe meet to receive a certificate of self-regulation?

(a) The Commission shall issue a certificate of self-regulation if it determines that the tribe has, for the three years immediately preceding the petition:

(1) Conducted its gaming activity in a manner that:

(i) Has resulted in an effective and honest accounting of all revenues;

(ii) Has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) Has been generally free of evidence of criminal or dishonest activity;

(2) Adopted and is implementing adequate systems for:

(i) Accounting of all revenues from the activity;

(ii) Investigation, licensing and monitoring of all employees of the gaming activity; and

(iii) Investigation, enforcement and prosecution of violations of its gaming ordinance and regulations;

(3) Conducted the operation on a fiscally and economically sound basis; and

(4) The gaming activity has been conducted in compliance with the IGRA, NIGC regulations in this chapter, and the tribe's gaming ordinance and gaming regulations.

(b) Indicators that a tribe has met the criteria set forth in paragraph (a) of this section may include, but are not limited to:

(1) Adoption and implementation of minimum internal control standards which are at least as stringent as those promulgated by the Commission, or until such standards are promulgated by the Commission, minimum internal control standards at least as stringent as those required by the State of Nevada or the State of New Jersey;

(2) Evidence that suitability determinations are made with respect to tribal gaming regulators which are at least as stringent as those required for key employees and primary management officials of the gaming operation(s);

(3) Evidence of an established independent regulatory body within the tribal government which:

(i) Monitors gaming activities to ensure compliance with federal and tribal laws and regulations;

(ii) Promulgates tribal gaming regulations pursuant to tribal law;

(iii) Ensures that there is an adequate system for accounting of all revenues from the activity and monitors such system for continued effectiveness;

(iv) Performs routine operational or other audits of the gaming operation(s);

(v) Routinely receives and reviews accounting information from the gaming operation(s);

(vi) Has access to and may inspect, examine, photocopy and audit all papers, books, and records of the gaming operation(s);

(vii) Provides ongoing information to the tribe on the status of the tribe's gaming operation(s);

(viii) Monitors compliance with minimum internal control standards for the gaming operation;

(ix) Adopts and implements an adequate system for investigation, licensing, and monitoring of all employees of the gaming activity;

(x) Maintains records on licensees and on persons denied licenses including persons otherwise prohibited from engaging in gaming activities within the tribe's jurisdiction;

(xi) Inspects and examines all premises where gaming is conducted;

(xii) Establishes standards for and issues vendor licenses or permits to persons or entities who deal with the gaming operation, such as manufacturers and suppliers of services, equipment and supplies;

(xiii) Establishes or approves, and requires the posting of, rules of games;

(xiv) Inspects games, tables, equipment, cards, and chips or tokens used in the gaming operation(s);

(xv) Establishes standards for technological aids and tests such for compliance with standards;

(xvi) Establishes or approves video surveillance standards;

(xvii) Adopts and implements an adequate system for the investigation of possible violations of the tribal gaming ordinance and regulations and takes appropriate enforcement actions;

(xviii) Determines that there are adequate dispute resolution procedures for gaming operation employees and customers, and ensures that such system is adequately implemented; and

(xix) Takes testimony and conducts hearings on regulatory matters, including matters related to the revocation of primary management officials and key employee licenses;

(4) Documentation of a sufficient source of permanent and stable funding for the independent tribal regulatory body which is allocated and appropriated by the tribal governing body;

(5) Adoption of a conflict of interest policy for the regulators/regulatory body and their staff;

(6) Evidence that the operation is financially stable;

(7) Adoption and implementation of a system for adequate prosecution of violations of the tribal gaming ordinance and regulations, which may include the existence of a tribal court system authorized to hear and decide gaming related cases;

(8) Evidence that the operation is being conducted in a safe manner, which may include, but not be limited to:

(i) The availability of medical, fire, and emergency services;

(ii) The existence of an evacuation plan; and

(iii) Proof of compliance with applicable building, health, and safety codes; and

(9) Evidence that reports are produced or received by the tribe, the tribal regulatory body, or the gaming operation based on an evaluation of the internal controls of the gaming operation during the three (3) year period immediately preceding the date of the petition.

(c) The burden of establishing self-regulation is upon the tribe filing the petition.

(d) During the review of the petition,—the Commission shall have complete access to all areas of and all papers, books, and records of the tribal regulatory body, the gaming operation, and any other entity involved in the regulation or oversight of the gaming operation. The Commission shall be allowed to inspect and photocopy any relevant materials. The tribe shall take no action to prohibit the Commission from soliciting information from any current or former employees of the tribe, the tribal regulatory body, or the gaming operation. Failure to adhere to this paragraph may be grounds for denial of a petition for self-regulation.

§ 518.5 What process will the Commission use to review petitions?

(a) The Chairman shall appoint one Commissioner to administer the Office of Self Regulation. The Office of Self Regulation shall undertake an initial review of the petition to determine whether the tribe meets all of the eligibility criteria of § 518.2. If the tribe fails to meet any of the eligibility criteria, the Office of Self Regulation shall deny the petition and so notify the tribe. If the tribe meets all of the eligibility criteria, the Office of Self Regulation shall review the petition and accompanying documents for completeness. If the Office of Self Regulation finds the petition incomplete, it shall immediately notify the tribe by letter, certified mail, return receipt requested, of any obvious deficiencies or significant omissions apparent in the petition and provide the tribe with an opportunity to submit additional information and/or clarification.

(b) The Office of Self Regulation shall notify a tribe, by letter, when it considers a petition to be complete.

(c) Upon receipt of a complete petition, the Office of Self Regulation shall conduct a review and investigation to determine whether the tribe meets the approval criteria under § 518.4. During the course of this review, the Office of Self Regulation may request from the tribe any additional material it deems necessary to assess whether the tribe has met the requirements for self-regulation. The tribe shall provide all information

requested by the Office of Self Regulation in a timely manner. The Office of Self Regulation may consider any evidence which may be submitted by interested or informed parties. The Office of Self Regulation shall make all such information on which it relies in making its determination available to the Tribe and shall afford the Tribe an opportunity to respond.

(d) The tribe shall post a notice, contemporaneous with the filing of the petition, advising the public that it has petitioned the Commission for a certificate of self regulation. Such notice shall be posted in conspicuous places in the gaming operation and the tribal government offices. Such notice shall remain posted until the Commission either issues a certificate or declines to do so. The tribe shall also publish such notice, once a week for four weeks, in a local newspaper with a broad based circulation. Both notices shall state that one of the criteria for the issuance of a certificate is that the tribe has a reputation for safe, fair, and honest operation of the gaming activity, and shall solicit comments in this regard. The notices shall instruct commentors to submit their comments directly to the Office of Self Regulation, shall provide the mailing address of the Commission and shall request that commentors include their name, address and day time telephone number.

(e) After making an initial determination on the petition, the Office of Self Regulation shall issue a report of its findings to the tribe.

(1) If the Office of Self Regulation determines that the tribe has satisfied the criteria for a certificate of self regulation, it shall so indicate in its report and shall issue a certificate in accordance with 25 CFR 518.6.

(2) If the Office of Self Regulation's initial determination is that a tribe has not met the criteria for a certificate of self regulation, it shall so advise the tribe in its report and the tribe shall have 60 days from the date of service of the report to submit to the Office of Self Regulation a written response to the report. This response may include additional materials which:

(i) The tribe deems necessary to adequately respond to the findings; and

(ii) The tribe believes supports its petition.

(f) At the time of the submission of its response the tribe may request a hearing before the Office of Self Regulation. This request shall specify the issues to be addressed by the tribe at such hearing, and any proposed oral or written testimony the tribe wishes to present. The Office of Self Regulation may limit testimony.

(g) The Office of Self Regulation shall notify the tribe, within 10 days of receipt of such request, of the date and place of the hearing. The Office of Self Regulation shall also set forth the schedule for the conduct of the hearing, including the specification of all issues to be addressed at the hearing, the identification of any witnesses, the time allotted for testimony and oral argument, and the order of the presentation.

(h) Following review of the tribe's response and the conduct of the hearing, the Office of Self Regulation shall issue a decision on the petition. The decision shall set forth with particularity the findings with respect to the tribe's compliance with standards for self-regulation set forth in this part. If the Office of Self Regulation determines that a certificate will issue, it will do so in accordance with 25 CFR 518.6.

(i) The decision to deny a petition shall be appealable to the full Commission. Such appeal shall be received by the Commission within thirty (30) days of service of the decision and shall include a supplemental statement that states with particularity the relief desired and the grounds therefor. The full Commission shall decide the appeal based only on a review of the record before it. The decision on appeal shall require a majority vote of the Commissioners.

(j) The decision of the Commission to approve or deny a petition shall be a final agency action. A denial shall be appealable under 25 U.S.C. 2714, subject to the provisions of § 518.12. The Commission decision shall be effective when the time for the filing of a request for reconsideration pursuant to § 518.12 has expired and no request has been filed.

§ 518.6 When will a certificate of self-regulation become effective?

A certificate of self-regulation shall become effective on January 1 of the year following the year in which the Commission determines that a certificate will issue. Complete petitions are due no later than June 30. No petitions will be considered for the following January 1 effective date that have not been received by June 30 of the previous year. Petitions will be reviewed and investigated in chronological order based on the date of receipt of a complete petition. The Commission will announce its determinations on December 1 for all those reviews and investigations it completes.

§ 518.7 If a tribe holds a certificate of self-regulation, is it required to report information to the Commission to maintain its self-regulatory status?

Yes. Each tribe that holds a certificate of self-regulation shall be required to submit a self-regulation report annually to the Commission in order to maintain its self-regulatory status. Such report shall set forth information to establish that the tribe has continuously met the eligibility requirements of § 518.2 and the approval requirements of § 518.4 and shall include a report, with supporting documentation, including a sworn statement signed by an authorized tribal official, which explains how tribal net gaming revenues were used in accordance with the requirements of 25 U.S.C. 2710(b)(2)(B)''. The annual report shall be filed with the Commission on April 15th of each year following the first year of self-regulation. Failure to file such report shall be grounds for the removal of a certificate under § 518.8.

§ 518.8 Does a tribe that holds a certificate of self-regulation have a continuing duty to advise the Commission of any information?

Yes. A tribe that holds a certificate of self-regulation has a continuing duty to advise immediately the Commission of any circumstances that may reasonably cause the Commission to review the tribe's certificate of self-regulation. Failure to do so is grounds for removal of a certificate of self-regulation. Such circumstances may include, but are not limited to: a change in management contractor; financial instability; or any other factors that are material to the decision to grant a certificate of self regulation.

§ 518.9 Are any of the investigative or enforcement powers of the Commission limited by the issuance of a certificate of self-regulation?

No. Subject to the provisions of 25 U.S.C. 2710(c)(5)(A) the Commission retains its investigative and enforcement powers over all class II gaming tribes notwithstanding the issuance of a certificate of self-regulation. The Commission shall retain its powers to investigate and bring enforcement actions for violations of the Indian Gaming Regulatory Act, accompanying regulations, and violations of tribal gaming ordinances.

§ 518.10 Under what circumstances may the Commission remove a certificate of self-regulation?

The Commission may, after an opportunity for a hearing, remove a certificate of self-regulation by a majority vote of its members if it determines that the tribe no longer

meets the eligiblity criteria of § 518.2, the approval criteria of § 518.4, the requirements of § 518.7 or the requirements of § 518.8. The Commission shall provide the tribe with prompt notice of the Commission's intent to remove a certificate of self-regulation under this Part. Such notice shall state the reasons for the Commission's action and shall advise the tribe of its right to a hearing under § 518. 11. The decision to remove a certificate is appealable to Federal District Court pursuant to 25 U.S.C. 2714.

§ 518.11 May a tribe request a hearing on the Commission's proposal to remove its certificate?

Yes. A tribe may request a hearing regarding the Commission's proposal to remove a certificate of self regulation under § 518.10. Such a request shall be filed with the Commission within thirty (30) days after the tribe receives notice of the Commission's action. Failure to request a hearing within the time provided by this section shall constitute a waiver of the right to a hearing.

§ 518.12 May a tribe request reconsideration by the Commission of a denial of a petition or a removal of a certificate of self-regulation?

Yes. A tribe may file a request for reconsideration of a denial of a petition or a removal of a certificate of self-regulation within 30 days of receipt of the denial or removal. Such request shall set forth the basis for the request, specifically identifying those Commission findings which the tribe believes to be erroneous. The Commission shall issue a final decision within 30 days of receipt of the request. If the Commission fails to issue a decision within 30 days, the request shall be considered to be disapproved.

Authority and Signature

This Final Rule was prepared under the direction of Tadd Johnson, Chairman, National Indian Gaming Commission, 1441 L. St. N.W., Suite 9100, Washington, D.C. 20005.

Signed at Washington, D.C. this 29th day of July, 1998.

Tadd Johnson,

Chairman.

[FR Doc. 98–20723 Filed 8–5–98; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 205, 206, 217, 219, 225, 226, 236, 252, and 253

[DFARS Case 98–D007]

Defense Federal Acquisition Regulation Supplement; Reform of Affirmative Action in Federal Procurement

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) guidance concerning programs for small disadvantaged business (SDB) concerns. These amendments conform to a Department of Justice (DoJ) proposal to reform affirmative action in Federal procurement, and are consistent with the changes made to the Federal Acquisition Regulation (FAR) in Federal Acquisition Circular (FAC) 97–06. DoJ's proposal is designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. *Pena,* 115 S. Ct. 2097 (1995).

DATES: *Effective Date:* October 1, 1998.

Applicability Date: The policies, provisions, and clauses of this interim rule are effective for all solicitations issued on or after October 1, 1998.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before October 5, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062, telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfarsacq.osd.mil

Please cite DFARS Case 98–D007 in all correspondence related to this issue. E-mail comments should cite DFARS Case 98–D007 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, PDUSD (A&T) DP (DAR), (703) 602–0131, or Mr. Mike Sipple, PDUSD (A&T) DP (CPA), (703) 695–8567. Please cite DFARS Case 98–D007.

SUPPLEMENTARY INFORMATION:

A. Background

In *Adarand,* the Supreme Court extended strict judicial scrutiny to Federal affirmative action programs that use racial or ethnic criteria as a basis for decisionmaking. In procurement, this means that any use of race in the decision to award a contract is subject to strict scrutiny. Under strict scrutiny, any Federal programs that make race a basis for contract decisionmaking must be narrowly tailored to serve a compelling Government interest.

DoJ developed a proposed structure to reform affirmative action in Federal procurement designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand.* The DoJ proposal was published for public notice and comment (61 FR 26042, May 23, 1996). DoJ issued a notice that provided a response to the public comments (62 FR 25648, May 9, 1997). To implement the DoJ concept, two interim FAR rules were issued: FAC 97–06, effective October 1, 1998, implements a price evaluation adjustment for SDB concerns (63 FR 35719, June 30, 1998); and FAC 97–07, effective January 1, 1999, implements an SDB participation program (63 FR 36120, July 1, 1998). This interim rule contains the revisions necessary to conform the DFARS to the interim FAR rule in FAC 97–06, and to the DoJ proposal implemented by the FAR rule. Subsequent revisions will be issued to conform the DFARS to the interim FAR rule in FAC 97–07.

B. Regulatory Flexibility Act

This interim rule is not excepted 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., because most of the changes merely conform the DFARS to the FAR rule in FAC 97–06. Two source selection considerations for SDB concerns currently in the DFARS, but not in the FAR, are amended by this rule to conform to the DoJ model: Leader company contracting (DFARS 217.401); and architect-engineer (A–E) services (DFARS 236.602). These two changes are not expected to have a significant economic impact on a substantial number of small entities since (1) leader company contracting is infrequently used by DoD; and (2) the primary factor in A–E selection is the determination of the most highly qualified firm; the SDB consideration is one of several secondary source selection factors. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance

with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 98–D007 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule amends the DFARS to conform it to the requirements of FAC 97–06, dated June 30, 1998, effective October 1, 1998. FAC 97–06 contains an interim rule amending the FAR to implement a DoJ proposal for reform of affirmative action in Federal procurement, to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. *Pena,* 115 S. Ct. 2097 (1995). The FAR rule requires use of a price evaluation adjustment for small disadvantaged business concerns in competitive acquisitions. Publication of an interim DFARS rule is necessary to conform the DFARS to the interim FAR rule effective October 1, 1998, and to the DoJ proposal implemented by the FAR rule. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 205, 206, 217, 219, 225, 226, 236, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 205, 206, 217, 219, 225, 226, 236, 252, and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 205, 206, 217, 219, 225, 226, 236, 252, and 253 continue to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 205—PUBLICIZING CONTRACT ACTIONS

205.207 [Amended]

2. Section 205.207 is amended by removing paragraphs (d)(i) and (d)(ii) and by redesignating paragraphs (d)(iii) through (d)(v) as paragraphs (d)(i) through (d)(iii), respectively.

PART 206—COMPETITION REQUIREMENTS

3. Section 206.203 is revised to read as follows:

206.203 Set-asides for small business concerns.

(b) Also no separate justification or determination and findings is required for contract actions processed as historically black college and university and minority institution set-asides (see 226.7003).

PART 217—SPECIAL CONTRACTING METHODS

4. Section 217.401 is revised to read as follows:

217.401 General.

(1) When leader company contracting is to be considered, take special effort to select a small disadvantaged business (SDB) concern as the follower company if—

(i) The follower company will be a subcontractor and the Standard Industrial Classification (SIC) Major Group of the acquisition is one in which use of a price evaluation adjustment is currently authorized (see FAR 19.201(b)).

(2) If the follower company will be a subcontractor, or if a price evaluation adjustment in the SIC Major Group is authorized, and an SDB is not selected as the follower company, the contracting officer shall document the contract file to reflect—

(i) The extent of actions taken to identify SDB concerns for participation in the acquisition; and

(ii) The rationale for selection of a non-SDB as the follower company.

PART 219—SMALL BUSINESS PROGRAMS

5. Section 219.001 is revised to read as follows:

219.001 Definitions.

Small disadvantaged business concern, as used in Subpart 217.4 (if the follower company will be a prime contractor), Subpart 219.11, and Subpart 236.6 (if the small disadvantaged business concern is a prime contractor or a participant in a joint venture at the prime contract level), is defined at FAR 19.001, paragraph (b) of the definition of ''small disadvantaged business concern.'' As used elsewhere in the DFARS, the term ''small disadvantaged business concern,'' for both prime contractors and subcontractors, is as defined at FAR 19.001, paragraph (b) of the definition of ''small disadvantaged business concern,'' except that the firm need not have received certification as a small disadvantaged business concern by the Small Business Administration or be listed on the register of small disadvantaged business concerns maintained by the Small Business Administration.

6. Section 219.201 is amended by revising paragraph (a); and by adding, after paragraph (d)(viii), paragraph (f) to read as follows:

219.201 General policy.

(a) The DoD will use the Section 8(a) program, small disadvantaged business evaluation preferences, advance payments, outreach, and technical assistance to meet its five percent goal for contract and subcontract awards to small disadvantaged businesses.

* * * * *

(f) The Directors, Office of Small and Disadvantaged Business Utilization, of the military departments and defense agencies are responsible for determining whether use of the price evaluation adjustment to achieve a small disadvantaged business goal has caused non-SDB firms in a particular Standard Industrial Classification Major Group to bear an undue burden or other inappropriate effect. A copy of each determination shall be forwarded to the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition and Technology), simultaneously with submittal to the Office of Federal Procurement Policy.

7. Section 219.201–5 is amended by revising the introductory text and paragraphs (1), (2), and (3) to read as follows:

219.202–5 Data collection and reporting requirements.

Determine the premium percentage to be entered in Item D4E of the Individual Contracting Action Report (DD Form 350), (see 253.204–70), as follows:

(1) For small disadvantaged business or historically black college and university/minority institution set-asides, divide the difference between the fair market price and the award price by the fair market price.

(2) For price evaluation adjustment awards (see FAR Subpart 19.11), divide the difference between the low responsive offer and the award price by the low responsive offer.

(3) For partial small business set-asides with preferential consideration for small disadvantaged business concerns, divide the difference between the award price on the non-set-aside

portion and the award price on the set-aside portion by the award price on the non-set-aside portion.

* * * * *

Subpart 219.3 [Removed]

8. Subpart 219.3 is removed.

219.501 [Removed]

9. Section 219.501 is removed.

219.502–2–70 [Removed]

10. Section 219.502–2–70 is removed.

11. Section 219.502–3 is revised to read as follows:

219.502–3 Partial set-asides.

(c)(1) If the Standard Industrial Classification Major Group of the acquisition is one in which use of a price evaluation adjustment for small disadvantaged business concerns is currently authorized (see FAR 19.201(b)), the adjustment shall be applied to the non-set-aside portion.

219.502–4, 219.504, 219.506, 219.508, and 219.508–70 [Removed]

12. Section 219.502–4, 219.504, 219.506, 219.508, and 219.508–70 are removed.

13. Section 219.703 is amended by revising paragraph (a)(2)(A) to read as follows:

219.703 Eligibility requirements for participating in the program.

(1) * * *

(2)(A) To be eligible as an SDB subcontractor, a concern must meet the definition in 219.001.

* * * * *

14. Section 219.705–4 is amended in paragraph (d) by revising the first sentence to read as follows:

219.705–4 Reviewing the subcontracting plan.

(d) Challenge any subcontracting plan that does not contain positive goals and consider the extent to which an offeror plans to use competition restricted to historically black colleges and universities or minority institutions.

* * *

15. Section 219.803 is amended by revising paragraph (c) to read as follows:

219.803 Selecting acquisitions for the 8(a) Program.

* * * * *

(c) Before considering a small business set-aside, review the acquisition for offering under the 8(a) Program.

16. Section 219.804–1 is revised to read as follows:

219.804–1 Agency evaluation.

(f) The 8(a) firms should be offered the opportunity to give a technical presentation.

17. Section 219.1005 is amended by revising paragraph (a)(3)(A) to read as follows:

219.1005 Applicability.

(a)(3)(A) Architect-engineering services in support of military construction projects or military family housing projects are exempt from the Small Business Competitiveness Demonstration Program, except for the emerging small business (ESB) set-aside requirements. Accordingly, these shall—

(*1*) Be reviewed for possible award under the 8(a) Program regardless of dollar value.

(*2*) Not be set aside for small business if the estimated value is $85,000 or more (including indefinite delivery-indefinite quantity contracts if the value of all anticipated orders exceeds $85,000).

(*3*) Be considered for ESB set-aside if the estimated value is both less than the emerging small business reserve amount and less than $85,000.

(*4*) Be considered for small business set-aside if the estimated value is less than $85,000, regardless of whether small business set-asides for other architect-engineer services are prohibited under the Small Business Competitiveness Demonstration Program, when an ESB set-aside is not appropriate.

* * * * *

219.1006 [Amended]

18. Section 219.1006 is amended by removing paragraph (b)(1); and in paragraph (b)(2) by removing the phrase ''Office of the Deputy Under Secretary of Defense (International & Commercial Programs)'' and inserting in its place the phrase ''Office of the Under Secretary of Defense (Acquisition and Technology)''.

219.1007 [Removed]

19. Section 219.1007 is removed.

20. Subpart 219.11 is added to read as follows:

Subpart 219.11—Price Evaluation Adjustments for Small Disadvantaged Business Concerns

Sec.
219.1102 Applicability.

Subpart 219.11—Price Evaluation Adjustment for Small Disadvantaged Business Concerns

219.1102 Applicability.

(b) The price evaluation adjustment also shall not be used in acquisitions that are for commissary or exchange resale.

Subpart 219.70 [Removed and Reserved]

21. Subpart 219.70 is removed and reserved.

Subpart 219.72 [Removed]

22. Subpart 219.72 is removed.

PART 225—FOREIGN ACQUISITION

225.403 [Amended]

23. Section 225.403 is amended by removing paragraph (b).

PART 226—OTHER SOCIOECONOMIC PROGRAMS

226.7004 [Removed and Reserved]

24. Section 226.7004 is removed and reserved.

25. Section 226.7008 is amended by revising paragraph (b) to read as follows:

226.7008 Solicitation provision and contract clause.

* * * * *

(b) Use the provision at FAR 52.226–2, Historically Black College or University and Minority Institution Representation, in solicitations set aside for HBCU/MIs and in solicitations that contain the clause at FAR 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

226.7103 [Amended]

26. Section 226.7103 is amended by removing paragraph (c)(2) and by redesignating paragraph (c)(3) as paragraph (c)(2).

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

27. Section 236.602–1 is amended by revising paragraph (a)(i)(6)(A) introductory text and paragraph (a)(i)(6)(C) to read as follows:

236.602–1 Selection criteria.

(a)(i) * * *

(6) * * *

(A) Consider the volume of work awarded by DoD during the previous 12 months. In considering equitable distribution of work among A–E firms, include small business concerns; historically black colleges and universities and minority institutions; firms that have not had prior DoD contracts; and small disadvantaged business concerns and joint ventures with small disadvantaged business participants if the Standard Industrial Classification Major Group of the acquisition is one in which use of a price evaluation adjustment is currently authorized (see FAR 19.201(b)).

* * * * *

(C) Consider the extent to which potential contractors identify and commit to small business and to small advantaged business, historically black college and university, or minority institution performance of the contract as subcontractors.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

28. Section 252.212–7001 is amended by revising the clause date to read ''OCT 1998''; and in paragraph (b) by removing the entries at 252.219–7001, 252.219–7002, and 252.219–7006.

252.219–7000, 252.219–7001, 252.219–7002, 252.219–7006, and 252.219–7008 [Removed and Reserved]

29. Sections 252.219–7000, 252.219–7001, 252.219–7002, 252.219–7006, and 252.219–7008 are removed and reserved.

PART 253—FORMS

30. Section 253.204–70 is amended—

a. In paragraph (c)(4)(viii)(B)*(8)(ii)* by removing the parenthetical ''(see 206.203)'';

b. In paragraphs (d)(5)(iv)(A)*(4)* and (d)(5)(iv)(B)*(3)* by removing the parenthetical ''(219.502–2–70)'';

c. By revising paragraphs (d)(5)(iv)(B)*(4);*

d. In paragraph (d)(5)(iv)(B)*(5)* by removing the parenthetical ''(219.502–3)'';

e. By removing paragraph (d)(5)(iv)(B)*(6);* and

f. By revising paragraph (d)(5)(v)(B) introductory text and paragraph (e)(3)(ii). The revised text reads as follows:

§ 253.204–70 DD Form 350, Individual Contracting Action Report.

* * * * *

(d) * * *

(5) * * *

(iv) * * *

(B) * * *

(4) Code D—SDB Price Evaluation Adjustment—Unrestricted. Enter code D if the action was unrestricted but an SDB received an award as a result of a price evaluation adjustment (see FAR Subpart 19.11).

* * * * *

(v) * * *

(B) Enter the code from the following list which corresponds to the ethnic group marked by the contractor in the solicitation provision at FAR 52.219–1, Small Business Program Representation, or FAR 52.212–3(c).

* * * * *

(e) * * *

(3) * * *

(ii) If Block E1 or E2 is completed, enter the offered price from the small business firm that would have been the low offeror if qualified nonprofit agencies employing people who are blind or severely disabled had not participated in the acquisition.

* * * * *

31. Section 253.204–71 is amended in paragraph (g)(2)(ii)(B)*(1)* by removing the parenthetical ''(219.502–2–70)''; by revising paragraph (g)(2)(ii)(B)*(2);* and in paragraph (g)(2)(ii)(B)*(3)* by removing the parenthetical ''(219.502–3)''. The revised text reads as follows:

§ 253.204–71 DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less.

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(B) * * *

(2) Application of an SDB price evaluation adjustment (see FAR Subpart 19.11); or

* * * * *

[FR Doc. 98–21043 Filed 8–5–98; 8:45 am]

BILLING CODE 5000–04–M

Proposed Rules

Federal Register
Vol. 63, No. 151
Thursday, August 6, 1998

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The proposed rule clarifies certain provisions in NCUA's regulation that sets forth the requirements for the purchase, sale and pledge of eligible obligations. Currently, the regulation provides that a federal credit union (FCU) may purchase real estate loans from any source if it is granting real estate loans on an ongoing basis and the purchase will facilitate the packaging of a pool of loans for sale on the secondary market. The proposal clarifies that a pool must include a substantial portion of the FCU's own loans and must be sold promptly. Further, the proposed rule explains when the purchase of a member's loan is not the purchase of an eligible obligation, but rather the making of a direct loan.

DATES: Comments must be received by October 5, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6553.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1979, the NCUA Board adopted a final rule that allowed an FCU to purchase real estate loans from any source if it is granting real estate loans on an ongoing basis and the purchase will facilitate the packaging of a pool of loans to be sold on the secondary market. 44 FR 27068 (May 9, 1979). The rule was based on three sections of the Federal Credit Union Act (the Act): §§ 107(5)(A)(i), 107(13) and 107(15). Section 107(13) authorizes an FCU to purchase, sell, pledge, discount, or otherwise receive or dispose of in whole or in part, any eligible obligations of its members. The proposed rule explained that, although on its face § 107(13) does not authorize the purchase of nonmember real estate loans, ''[c]onsidering the Congressional intent to allow credit unions to take advantage of secondary mortgage market facilities, the Administration does not believe that Congress intended 107(13) to be an express prohibition on such purchases provided they are authorized by other sections of the Act.'' 44 FR 60, 61 (January 2, 1979). The Board found this authority in the incidental powers clause, § 107(15), and the long term real estate lending power, § 107(5)(A)(i) of the Act. The Board believed that an FCU's power to purchase nonmember real estate loans was incident to its power to make long term real estate loans, because ''[i]n order to operate a successful real estate program an FCU must have access to the secondary market. This can best be done by pooling loans.'' 44 FR at 61. The Board recognized that, for an FCU to pool loans to sell in the secondary market, it would sometimes need to purchase nonmember loans to complete its pool. The proposed rule restricted the purchase of nonmember loans to the loans of other credit unions because the Board was mindful of the ''restrictions placed on real estate lending by Congress.'' 44 FR at 61. Although the final rule removed the restriction that the nonmember loans be purchased from credit unions, the Board remained concerned that this incidental power not be interpreted too broadly and that the focus remain on making loans to members.

The Board balanced ''the need for efficient access to the secondary market against Congressional intent in restricting the real estate loans'' of FCUs. 44 FR at 22070. The preamble to the final rule stated that the FCU's ''board of directors must have adopted a policy of granting long term real estate loans'' and must be granting them ''on an on-going basis''; an FCU ''must include a substantial portion of its own loans in the pool''; once a particular pool is sold, an FCU must ''grant more loans before a second pool can be assembled''; and ''Federal credit unions will be expected to sell or pledge obligations purchased to package a pool of loans promptly. Arrangements to dispose of such loans should generally be made in advance of their purchase by obtaining a commitment from a buyer to purchase the pool of loans before the pool is actually assembled.'' 44 FR at 27070.

Although the preamble to the final rule discusses the requirements that a pool must include a substantial portion of the credit union's own loans and must be sold promptly, questions on these points have arisen from time to time. NCUA has responded, through legal opinion letters and provisions in the Accounting Manual for Credit Unions, that FCUs must meet these conditions. Accounting Manual for Federal Credit Unions, § 6030.4. The Board believes it will be helpful to FCUs to clarify these existing requirements by having them set out in the regulation, itself. FCUs and persons involved in advising them often review regulations pertaining to particular activities and, with this amendment, it will be easier for FCUs to be informed about the requirements for the purchase of eligible obligations without consulting other sources for guidance.

The Act and NCUA's regulations limit the aggregate unpaid balance of eligible obligations purchased to 5% of the unimpaired capital and surplus of the purchaser. 12 U.S.C. 1757(13) and 12 CFR 701.23(b)(3). The current regulation specifically exempts from the 5% limitation student and real estate loans purchased under paragraphs (b)(1)(iii) and (iv) and eligible obligations purchased under paragraph (b)(1)(i) that are refinanced by the purchasing credit union so that they are loans it is empowered to grant. 12 CFR 701.23(b)(3). There has been some confusion as to whether FCUs participating in indirect lending and leasing must account for these as eligible obligations subject to the 5% limitation or if they may treat them as loans.

General Counsel opinion letters have stated that indirect lending and indirect leasing arrangements may be treated as loans if certain conditions are met. The proposed rule lists the conditions, so that FCUs can determine if a transaction qualifies as a loan or the purchase of an eligible obligation.

Proposal

The Board proposes to amend § 701.23(b)(1)(iv) by clarifying that a pool of loans, as used in that subsection, must include a substantial portion of the FCU's own loans and must be sold promptly. This clarification mirrors what is currently stated in the Accounting Manual. Accounting Manual for Federal Credit Unions, § 6030.4. To provide a more concrete measure for compliance, the Board has considered substituting specific numbers to measure what is meant by ''substantial'' and ''promptly'' in the proposed rule. Agency staff with expertise in the secondary market has suggested that, in order for an FCU's pool of loans to be considered to contain a ''substantial portion of its own loans,'' a reasonable measure would be at least 75%. Staff believes this figure represents current practice amongst FCUs participating in the secondary market. FCUs participating in the secondary market normally only need a small percentage of nonmember loans to complete the pool. Further, because FCUs do not have the express statutory authority to purchase nonmember loans, the Board continues to interpret this provision narrowly. It should only be used by an FCU that is granting member real estate loans on an ongoing basis, pooling the loans and selling them on the secondary market, as a mechanism to complete a pool. It should not be a mechanism for FCUs to circumvent the lending restrictions on loans to nonmembers.

Regarding the period that FCUs can hold the pool of loans, FCUs will be expected to sell them ''promptly'' because they will be purchasing loans of nonmembers, loans they could not grant. The 1979 preamble states that ''[a]rrangements should generally be made in advance of their purchase by obtaining a commitment from a buyer to purchase the pool of loans before the pool is actually assembled.'' 44 FR at 27070. Agency staff has suggested that 120 days is adequate time given the commitment period from purchasers in the secondary market.

Although specific numbers provide a more definitive measure, they remove flexibility which may be useful in certain circumstances. The Board is interested in receiving comments on whether specific numbers should be used and, if so, what numbers are reasonable.

The Board proposes amending § 701.23(b)(3) by reorganizing it so that the current exceptions to the 5% limit are listed in separate subsections and the indirect lending and leasing exception is added to the list. The new provision sets forth the conditions for classifying an indirect lending or leasing arrangement as a loan. First, the FCU must make the final underwriting decision. This means that the FCU must actually review the application and determine that the transaction conforms to its lending or leasing policies. Second, the sales or lease contract must be assigned to the FCU very soon after it is signed by the member and the dealer or leasing company. In some programs, the assignment will occur immediately. In others, the assignment will occur the next business day. The longer the time between the formation of the contract and its assignment, the more likely the program will be viewed as involving the purchase of an eligible obligation rather than the making of a loan. The NCUA Board is interested in receiving comment on whether a specific number of days should be substituted for ''very soon'' and, if so, what number is reasonable.

Request for Additional Comment

Section 701.23(b)(1)(iii) and (iv), with certain restrictions, allows an FCU to purchase student and real estate loans from any source if the FCU is pooling them for sale on the secondary market. The NCUA Board is also interested in receiving comment on whether the types of loans that can be purchased from any source for purposes of creating pools for sale should be expanded to include auto and credit card loans. Comments on this issue will assist the Board in determining whether to propose regulatory changes to include auto and credit card loans.

REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, meaning those under $1 million in assets. The NCUA Board has determined and certifies that the proposed rule if adopted will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that it is highly unlikely that small credit unions would be engaged in pooling real estate loans for sale on the secondary market. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed amendments will only apply to federal credit unions. Section 741.8(b)(1) specifically exempts state chartered federally insured credit unions from 701.23(b)(1)(iv). Proposed § 701.23(b)(v) only applies to FCUs.

Paperwork Reduction Act

The proposal does not impose any additional paperwork requirements on FCUs.

List of Subjects in 12 CFR Part 701

Credit unions, Eligible obligations.

By the National Credit Union Administration Board on July 30, 1998.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERALLY-INSURED CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and 1798. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Amend § 701.23 by adding a sentence to the end of paragraph (b)(1)(iv) and by revising paragraph (b)(3) to read as follows:

§ 701.23 Purchase, sale and pledge of eligible obligations.

* * * * *

(b) * * *

(1) * * *

(iv) * * * A pool must include a substantial portion of the credit union's own loans and must be sold promptly.

* * * * *

(3) The aggregate of the unpaid balance of eligible obligations purchased under paragraph (b) of this section cannot exceed 5% of the unimpaired capital and surplus of the purchaser. The following can be excluded in calculating this 5% limitation:

(i) Student loans purchased in accordance with paragraph (b)(1)(iii) of this section;

(ii) Real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section;

(iii) Eligible obligations purchased in accordance with paragraph (b)(1)(i) of this section that are refinanced by the purchaser so that it is a loan it is empowered to grant; and

(iv) An indirect lending or indirect leasing arrangement that is classified as a loan and not the purchase of an eligible obligation because the federal credit union makes the final underwriting decision and the sales or lease contract is assigned to the federal credit union very soon after it is signed by the member and the dealer or leasing company.

* * * * *

[FR Doc. 98–20952 Filed 8–5–98; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The NCUA is proposing to incorporate into its regulations the agency's longstanding interpretation that federal credit unions can permit a nonmember to assume a member's long-term residential real estate loan in conjunction with the nonmember's purchase of the member's principal residence.

DATES: Comments must be received on or before October 5, 1998.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: Since 1977, federal credit unions have had the authority to offer long-term real estate loans to finance a member's principal residence. 12 U.S.C. 1757(A)(i). NCUA's implementing regulation for this authority is set forth at 12 CFR 701.21(g).

In 1985, the NCUA Board issued Interpretive Ruling and Policy Statement 85–3 (IRPS 85–3). 50 FR 51840 (December 20, 1985). IRPS 85–3 stated that, incidental to a federal credit union's authority to make long-term real estate loans to members, a federal credit union may permit assumptions, by either members or nonmembers, under the terms and conditions specified in the loan agreement and consistent with the Federal Credit Union Act and NCUA's Regulations. The Board also stated that, in the case of a nonmember assumption, there must be no new money lent to the borrower and no extension of the original maturity date specified in the loan agreement with the member.

NCUA has a policy of periodically reviewing its regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' IRPS 87–2, Developing and Reviewing Government Regulations. As part of its regulatory review program, NCUA reviewed its IRPS to determine their current effectiveness. As a result of that review, the NCUA Board stated that it planned to incorporate IRPS 85–3 into NCUA's Regulations. 62 FR 11773 (March 13, 1997) and 62 FR 50245 (September 25, 1997). The Board's goal is to increase regulatory effectiveness by making it easier for credit unions to locate applicable rules regarding real estate lending. Accordingly, the Board is proposing to add a new paragraph to Section 701.21(g) that will incorporate IRPS 85–3 so that this provision on nonmember assumption of loans will be in the same place with the other regulatory provisions regarding real estate lending. Although the language is slightly different, the policy set forth in the proposed amendment is, for all practical purposes, identical to the policy set forth in IRPS 85–3.

This proposal does not authorize a refinancing by a nonmember. Further, this proposal, just as IRPS 85–3, does not permit a federal credit union to grant an assumption of a loan to a nonmember if the underlying intent of the original loan to the member was to grant an assumption by a nonmember immediately or soon after making the original loan. NCUA would view such a transaction as a sham and will not permit federal credit unions to circumvent the restriction on lending to nonmembers. NCUA will review assumptions by nonmembers during the examination process. Federal credit unions engaging in such sham transactions will be subject to NCUA's administrative enforcement process.

This proposal does not require a federal credit union to permit nonmember assumption of real estate loans. A federal credit union's loan agreements can provide that a loan is immediately due and payable if the member's residence securing the loan is sold.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The NCUA Board has determined and certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions.

Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposal only applies to federal credit unions. NCUA has determined that the proposed amendment does not constitute a significant regulatory action for the purposes of the Executive Order.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Insurance, Mortgages, Reporting and recordkeeping requirements, Surety bonds.

By the National Credit Union Administration Board on July 30, 1998.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, it is proposed that 12 CFR Part 701 be amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C 4311–4312.

2. Section 701.21 is amended by adding a new paragraph (g)(7) to read as follows:

§ 701.21(g) Loans to members and lines of credit to members.

* * * * *

(g) * * *

(7) *Assumption of real estate loans by nonmembers.* A federal credit union may permit a nonmember to assume a member's mortgage loan in conjunction with the nonmember's purchase of the member's principal residence, provided that the nonmember assumes only the remaining unpaid balance of the loan, the terms of the loan remain unchanged, and there is no extension of the original maturity date specified in the loan agreement with the member. An assumption is impermissible if the original loan was made with the intent of having a nonmember assume the loan.

* * * * *

[FR Doc. 98–20951 Filed 8–5–98; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 980716108–8108–01]

RIN 0607–AA20

Amendment to Foreign Trade Statistics Regulations To Clarify Exporters' and Forwarding Agents' Responsibilities and To Clarify Provisions for Executing a Power of Attorney

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Bureau of the Census (Census Bureau) proposes amending the Foreign Trade Statistics Regulations (FTSR), 15 CFR Part 30, to clarify exporters' and forwarding agents' responsibilities for providing and reporting information on the Shipper's Export Declaration (SED), and to clarify the provisions for executing a power of attorney when exporters authorize forwarding agents to perform services regarding the export of merchandise out of the United States. This proposed rule will further clarify the provisions for executing a power of attorney when the principal party is transmitting SED information electronically. The Census Bureau also proposes requiring that the SED be prepared in English.

The proposed revisions are consistent with the Bureau of Export Administration's Export Administration Regulations (EAR) regarding export control responsibilities of exporters and forwarding agents. The Department of Treasury concurs with the provisions contained in this proposed rule.

DATES: Written comments must be submitted on or before October 5, 1998.

ADDRESSES: Direct all written comments on this proposed rulemaking to the Director, Bureau of the Census, Room 2049, Federal Building 3, Washington, D.C. 20233.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, Bureau of the Census, Room 2104, Federal Building 3, Washington, D.C. 20233–6700, by telephone on (301) 457–2255 or by fax on (301) 457–2645.

SUPPLEMENTARY INFORMATION:

Background

In response to requests from various members of the trade community, the Census Bureau proposes amending 15 CFR Part 30 to clarify the responsibilities of exporters and forwarding agents for preparing and submitting SEDs and to clarify the provisions for obtaining and executing a power of attorney.

For purposes of this proposed rule, the exporter is defined as any person in the United States; any firm; government agency, department, or commission; and any other association or organization, whether or not organized for profit, organized under the laws of the United States, or any jurisdiction within the United States, who is also the principal party in interest in the export transaction. Generally, the exporter is the U.S. manufacturer, seller, order party, or licensee on an export license. A forwarding agent may act as exporter, but only when it is the ''applicant'' and ''licensee'' on an export license. A foreign principal, not located in the United States at the time of export, must not be designated as exporter on the SED. If a U.S. manufacturer sells merchandise for export to a foreign company (including Ex Works), the U.S. manufacturer must be listed as exporter on the SED. If a U.S. manufacturer sells merchandise to a U.S. seller (wholesaler/distributor), and the U.S. seller sells the merchandise for export to a foreign company (including Ex Works), the U.S. seller must be listed as exporter on the SED. If a U.S. manufacturer or seller sells merchandise to a U.S. order party and the U.S. order party arranges for the sale and export of the merchandise to a foreign company (including Ex Works), the U.S. order party must be listed as exporter on the SED.

The U.S. manufacturer, seller, or order party, that is, the principal party in interest in the export transaction, may authorize its own forwarding agent to facilitate the export transaction or may authorize the forwarding agent designated by the foreign company. In either case, the U.S. manufacturer, seller, or order party must authorize the forwarding agent to act on its behalf in completing and filing the SED in a power of attorney or a written authorization to execute the SED, or sign the authorization printed on the SED. When a U.S. manufacturer, seller, or order party authorizes a forwarding agent to facilitate the export transaction, the manufacturer, seller, or order party, that is, whoever sold the merchandise to the foreign company, must be listed as the exporter on the SED, unless the forwarding agent is the applicant and licensee on an export license.

The forwarding agent is any person in the United States; any firm; government agency, department or commission; and any other association or organization, whether or not organized for profit, organized under the laws of the United States, or any jurisdiction within the United States, who is authorized by the U.S. principal party in interest in the export transaction to perform the services required to facilitate the export of the merchandise out of the United States. The principal party must authorize a forwarding agent to act on its behalf in completing and filing the SED in a power of attorney or a written authorization to execute the SED, or sign the authorization printed on the SED. The principal party also must provide the forwarding agent with the information necessary to correctly prepare the SED in accordance with the requirements specified in FTSR § 30.7.

The FTSR places ultimate responsibility for the export transaction on the exporter. However, the FTSR also considers all parties to the export transaction, including U.S. and foreign principals and forwarding agents responsible for providing information necessary to complete the SED, and for the accuracy of the information reported on the SED. If a forwarding agent's principal does not possess the necessary information, the forwarding agent may request that other parties to the export transaction provide that information. The parties to the transaction must provide the forwarding agent with the necessary information to correctly prepare the SED. Necessary and proper documentation must be maintained by all parties involved in the export transaction to support information reported on the SED.

This proposed rule clarifies provisions for using a properly executed power of attorney when a forwarding agent is authorized to prepare the SED on behalf of the exporter and when the SED information is filed electronically. Suggested formats for a power of attorney and a written authorization for executing a SED are available from the Foreign Trade Division, Bureau of the Census, and from the Office of Export Services, Bureau of Export Administration. Formats for the power of attorney and written authorization are provided in Appendix A and B to this proposed rule.

This proposed amendment further requires that the SED be prepared in English. This provision is already included in the Census Bureau's instructions for completing the SED, so this proposed amendment serves simply to include that requirement in the Code of Federal Regulations (CFR).

In addition, this proposed amendment clarifies the provision in § 30.7(d)(2) that a foreign entity, if operating in the United States at the time of export, can be listed as ''exporter'' on the SED, but does not need to report an Internal Revenue Service Employer Identification Number (EIN) or a Social Security Number (SSN) on the SED. Using an EIN or SSN that is not your own is prohibited.

Program Requirements

In order to comply with the requests from the trade community to update the provisions of the FTSR and to clarify the items discussed above, the Census Bureau proposes amending appropriate sections of the FTSR.

The Census Bureau proposes amending Section 30.4(a) to include: a description of the duties and responsibilities of exporters and forwarding agents; provisions for obtaining information for the preparation of the SED; provisions for authorizing a forwarding agent to perform exporting services; and provisions for filing a power of attorney when SED information is going to be transmitted electronically.

The Census Bureau proposes amending Section 30.4(b) to include the provision that the SED be prepared in English. This will make it consistent with the current instructions for preparing the SED.

The Census Bureau proposes amending Section 30.7(d)(1) ''*Name of exporter and exporter's Employer Identification Number*'' to clarify the designation of ''exporter'' named on the SED.

The Census Bureau proposes amending Section 30.7(d)(2) ''*Exporters Employer Identification Number*'' to clarify the requirement that a foreign principal, located in the United States at the time of export, can complete a SED as ''exporter'' without reporting an Internal Revenue Service EIN or SSN.

The Census Bureau further proposes amending section 30.7(e) ''*Agent of exporter (forwarding agent)*'' to specify the responsibilities of the forwarding agent in preparing the SED.

Rulemaking Requirements

This proposed rule is exempt from all requirements of Section 553 of the Administrative Procedure Act because it deals with a foreign affairs function (5 U.S.C. (A) (1)). However, this is being published as a proposed rule with an opportunity for public comment because of the importance of the issues raised by this rulemaking.

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603 (a)).

Executive Orders

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to, nor shall 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 (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule covers collections of information subject to the provisions of the PRA, which are cleared by the OMB under OMB Control Number 0607–0152.

This proposed rule will not impact the current reporting-hour burden requirements as approved under OMB Control Number 0607–0152 under provisions of the PRA of 1995, Public Law 104–13.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Exports, Reporting and Recordkeeping requirements.

For the reasons set out in the preamble, it is proposed that Part 30 be amended as follows:

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., 1004); Department of Commerce Organization Order No. 35–2A, August 4, 1975, 40 CFR 42765.

Subpart A—General Requirements—Exporter

2. Section 30.4 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 30.4 Preparation and signature of Shipper's Export Declarations.

(a) The Shipper's Export Declaration (SED) shall be prepared and signed by any person in the United States; any firm; government agency, department, or commission; and any other association or organization, whether or not organized for profit, organized under the laws of the United States, or any jurisdiction within the United States, who is also the principal party in interest in the export transaction. Generally, that person will be the exporter or the authorized forwarding agent.

(1) *Exporter.* The exporter is any person in the United States; any firm; government agency, department, or commission; and any other association or organization, whether or not organized for profit, organized under the laws of the United States, or any jurisdiction within the United States, who is also the U.S. principal party in interest in the export transaction. Generally, the exporter is the U.S. manufacturer, seller, order party [3a], or licensee on an export license. A forwarding agent may be the exporter only when it is the ''applicant'' and ''licensee'' on an export license. (See 15 CFR §§ 748.5 and 750.7(d)).

(2) *Forwarding Agent.* The forwarding agent is any person in the United States; any firm; government agency, department, or commission; and any other association or organization, whether or not organized for profit, organized under the laws of the United States, or any jurisdiction within the United States, who is authorized by the

[3a] The order party is that person in the United States who conducted the direct negotiations or correspondence with the foreign purchaser or ultimate consignee and who, as a result of these negotiations, received the order from the foreign purchaser or ultimate consignee.

U.S. principal party in interest in the export transaction to perform the services required to facilitate the export of merchandise out of the United States. Forwarding agents should be authorized in a power of attorney or the authorization printed on the SED, or with some type of written authorization to execute the SED. The forwarding agent is generally responsible for arranging for the transport and delivery of the merchandise to the exporting carrier and, when the principal requests it, correctly preparing and submitting the SED. Forwarding agents that prepare the SED do so based on information obtained from the principals and other appropriate parties to the transaction and are responsible for the accuracy of all information provided on the SED, including the description of the merchandise being exported, export licensing information, Schedule B commodity numbers, and quantity, weight, and valuation information for the merchandise being exported. All parties to a transaction shall maintain the necessary and proper documentation to support the information reported on the SED. (See § 30.11 and 15 CFR Part 762 on Recordkeeping).

(3) *Information on the Shipper's Export Declaration (SED).* The data provided on the SED shall be complete, correct, and shall be based on personal knowledge of the facts stated or on information furnished by the parties involved in the export transaction. All parties involved in export transactions, including U.S. and foreign principals and forwarding agents, should be aware that invoices and other commercial documents may not necessarily contain all the information needed for the preparation of the SED. The parties must ensure that all the information needed for the SED, including correct export licensing information, is provided to any forwarding agent for the purpose of correctly preparing the SED. The principal may delegate the responsibility of obtaining the correct export control information and required licenses to the forwarding agent, as long as this delegation of responsibility is reflected in writing and signed by both the principal and the forwarding agent.

(4) *Authorizing a Forwarding Agent.* Although a U.S. or foreign principal may designate a forwarding agent, only the U.S. principal has the authority to execute a power of attorney or sign the authorization printed on the SED, or provide a written authorization authorizing the forwarding agent to perform the services required to facilitate the export transaction. The failure of the U.S. principal to authorize, in writing, the forwarding agent to act on its behalf does not relieve either party of responsibility for actions taken in connection with an export transaction. A power of attorney or written authorization is most useful when it specifies the responsibilities of the parties with particularity, but it should at least state that the forwarding agent has authority to act on behalf of the U.S. principal as its true and lawful agent for purposes of the export transaction and in accordance with the laws and regulations of the United States. A power of attorney may be executed by using either the available formats provided by the Foreign Trade Division, Bureau of the Census, or the Office of Export Services, Bureau of Export Administration, or any other format or authorization acceptable to the parties involved. The parties to the transaction must keep any power of attorney or written authorization on file and available for inspection on demand. In cases where the forwarding agent is acting on behalf of a U.S. principal and filing the SED information electronically, a power of attorney or other written authorization is particularly important.

(b) The SED shall be prepared in English and shall be typewritten or prepared in ink or other permanent medium (except indelible pencil). The use of duplicating processes, as well as the overprinting of selected items of information is acceptable.

* * * * *

3. Section 30.7 is proposed to be amended by revising paragraphs (d)(1), (d)(2), and (e) to read as follows:

§ 30.7 Information required on Shipper's Export Declarations.

* * * * *

(d) *Name of exporter and exporter's Employer Identification Number (EIN).* The name and address (number, street, city, state, zip code) of the exporter and the exporter's EIN shall be entered where requested on the Shipper's Export Declaration (SED). The EIN shall be the exporter's own and not another's EIN.

(1) *Name of exporter.* The exporter named on the SED must be any person in the United States; any firm; government agency, department, or commission; and any other association or organization, whether or not organized for profit, organized under the laws of the United States, or any jurisdiction within the United States, who is also the U.S. principal party in interest in the export transaction (see § 30.4(a)(1)). In addition, a forwarding agent that is the ''applicant'' and ''licensee'' on an export license is considered the exporter. (On Form 7513, if an authorized agent is representing the exporter, the name of the exporter as defined herein should be shown on the line labeled ''For account of'' where ''Principal or seller'' is indicated below the line on the form.)

(2) *Exporter's Employer Identification Number (EIN).* An exporter shall report its own Internal Revenue Service EIN on the SED. If, and only if, no Internal Revenue Service EIN has been assigned to the exporter, the exporter's SSN, preceded by the symbol ''SS'' must be reported. In situations when a foreign principal who does not possess an EIN or SSN operates from within the United States to facilitate its own export, no EIN or SSN reporting requirement applies. Using another's EIN or SS is prohibited.

(e) *Forwarding Agent.* The name and address of the duly authorized forwarding agent (if any) of the U.S. principal shall be recorded where requested on the SED. (See § 30.4(a)(2) or 15 CFR Part 772 for a definition of ''forwarding agent''). In addition, a forwarding agent that is an ''applicant'' and ''licensee'' on an export license is considered the exporter, and as the exporter, must enter his/her own name, address, and EIN or SSN as the exporter. (See § 30.4(a)(1) and § 30.7(d)). (On Form 7513, the information as to agent (if any) should be shown on the line labeled ''Exporter'' where ''Actual shipper or agent'' is indicated below the line on the form.)

* * * * *

Dated: July 21, 1998.

James F. Holmes,

Acting Director, Bureau of the Census.

Bureau of the Census—Appendix A

Note: The following appendix will not appear in the Code of Federal Regulations.

Power of Attorney Export Forwarding Agent

Know all men by these presents, That _____ (Name of Exporter), the (Exporter) organized and doing business under the laws of the State or Country of _____ and having an office and place of business at _____ (Address of Exporter) hereby authorizes _____ (Forwarding Agent), the (Forwarding Agent) of _____ (Address of Forwarding Agent) to act for and on its behalf as a true and lawful agent and attorney of the Exporter for and in the name, place, and stead of the Exporter, from this date, in the United States either in writing, electronically, or by other authorized means to:

Act as Forwarding Agent for Export Control, Census Reporting, and Customs purposes. Make, endorse, or sign any Shipper's Export Declaration or other documents or to perform any act which may

be required by law or regulation in connection with the exportation or transportation of any merchandise shipped or consigned by or to the Exporter and to receive or ship any merchandise on behalf of the Exporter.

The Exporter hereby certifies that all statements and information contained in the documentation provided to the Forwarding Agent relating to exportation are true and correct. Furthermore, the Exporter understands that civil and criminal penalties, may be imposed for making false or fraudulent statements or for the violation of any United States laws or regulations on exportation.

This power of attorney is to remain in full force and effect until revocation in writing is duly given by the Exporter and received by the Forwarding Agent.

In witness whereof, _____ (Full Name of Exporter/Exporting Company) caused these presents to be sealed and signed:

Witness: _____

Signature: _____

Capacity: _____

Date: _____

Bureau of the Census—Appendix B

Note: The following appendix will not appear in the Code of Federal Regulations.

Authorization to Prepare or Transmit Shipper's Export Information (Suggested Format)

I _____(Exporter), authorize _____(Forwarding Agent), to act as forwarding agent for export control and customs purposes and to sign any Shipper's Export Declaration (SED), or transmit such export information electronically, which may be required by law or regulation in connection with the exportation or transportation of any merchandise on behalf of said Exporter. The Exporter certifies that necessary and proper documentation to accurately complete the SED or transmit the information electronically is and will be provided to the said Forwarding Agent. Exporter further understands that civil and criminal penalties may be imposed for making false or fraudulent statements or for the violation of any United States laws or regulations on exportation and agrees to be bound by all statements of said agent based upon information or documentation provided by exporter to said agent.

Signature: _____(Exporter)

Capacity: _____

Date: _____

[FR Doc. 98–21024 Filed 8–5–98; 8:45 am]

BILLING CODE 3510–07–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Concept Release Concerning Performance Data and Disclosure for Commodity Trading Advisors and Commodity Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period on Concept Release.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission issued a Concept Release concerning performance data and disclosure for commodity trading advisors and commodity pools on June 18, 1998 (63 FR 33297) with comments due by August 17, 1998. In response to a request from the Managed Funds Association, the Commission has determined to extend the comment period for an additional 30 days, until September 16, 1998. As indicated in the release, comments should be submitted by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*.

DATES: Comments must be received on or before September 16, 1998.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Jr., Chief Accountant, (202) 418–5459, electronic mail: ''paulb@cftc.gov;'' or Robert B. Wasserman, Special Counsel, (202) 418–5092, electronic mail: ''rwasserman@cftc.gov,'' Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

Issued in Washington, D.C., on this *30*th day of July, 1998, by the Commodity Futures Trading Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–20928 Filed 8–5–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 1b, 343, and 385

[Docket No. RM98–13–000]

Complaint Procedures

July 29, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to revise its regulations (Rule 206) governing complaints filed with the Commission under the Interstate Commerce Act, the Federal Power Act, the Natural Gas Act, the Natural Gas Policy Act, and the Public Utility Regulatory Policies Act of 1978. The goals of the proposed revisions are to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner.

The Commission also proposes to revise certain sections of its procedural rules applicable to oil pipeline proceedings, to conform to the proposed changes in the complaint procedures regulations. In addition, the Commission proposes to revise its alternative dispute resolution regulations to conform to the changes made by the Administrative Dispute Resolution Act of 1996, and to codify its current Enforcement Hotline procedures in the rules relating to investigations.

DATES: Comments are due October 5, 1998.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1275.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via

Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202-208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn System Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Notice of Proposed Rulemaking

The Federal Energy Regulatory Commission (Commission) is proposing to revise section 385.206 of its regulations (Rule 206) [1] governing complaints filed with the Commission under the Interstate Commerce Act, the Federal Power Act, the Natural Gas Act, the Natural Gas Policy Act, and the Public Utility Regulatory Policies Act of 1978. The goals of the proposed revisions are to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner.

The Commission also proposes to revise certain sections of Part 343, Procedural Rules Applicable to Oil Pipeline Proceedings,[2] to conform to the proposed changes in the Commission's complaint procedures in Part 385 of the regulations. In addition, the Commission proposes to revise its alternative dispute resolution (ADR) regulations (Rules 604, 605 and 606) [3] to conform to the changes made by the Administrative Dispute Resolution Act of 1996,[4] and to codify its current Enforcement Hotline procedures in Part 1b, Rules Relating to Investigations.[5]

I. Background

The Commission first received requests to change its complaint procedures in filings arising out of a proceeding concerning interstate natural gas pipelines. The Pipeline Customer Coalition [6] filed a proposal for expedited procedures for the consideration and resolution of complaints filed with respect to natural gas pipeline rates, services, or practices.[7] The Interstate Natural Gas Association Of America (INGAA) filed its own proposal and comments in opposition to the Coalition's proposal.[8]

On March 30, 1998, in Docket No. PL98–4–000, the Commission held a symposium on the Commission's complaint procedures to determine (1) how well the Commission's current complaint procedures are working, (2) whether changes to the current complaint procedures are appropriate, and (3) what type of changes should be made.[9] Whereas the Coalition's and INGAA's proposals were restricted to complaints against pipelines, the purpose of the symposium was to discuss the Commission's complaint procedures on a generic basis. The Commission obtained a cross section of views from all segments of the gas, electric, and oil pipeline industries, as well as state regulatory agencies and members of the energy bar. The Commission received a number of comments following the symposium representing a broad range of interests from the natural gas pipeline, electric, and oil pipeline industries.

As a result of a commitment made by representatives of various segments of the electric industry at the March 30, 1998 symposium, the Electric Industry Dispute Resolution Working Group (Electric Working Group) [10] filed, in Docket No. PL98–4–000, recommendations and proposed procedures for dispute resolution.[11]

In addition, a team comprised of Staff from different offices within the Commission (called FERC First) recommended an initiative that focuses on revising internal procedures for a more timely resolution of contested matters and complaints. That proposal would accomplish this goal in two ways: (1) significantly expand use of consensual decision-making by greater emphasis on ADR techniques; and (2) use aggressive time limits for the issuance of decisions on matters that are not resolved in a consensual manner. The initiative also proposes new complaint processes for all types of issues and complaints.

II. Discussion

A. Overview

The natural gas and electric industries have undergone and will continue to undergo significant transformations as a result of changes to the Commission's regulatory policies. These industries are now operating in an environment which is increasingly driven by competitive market forces. Because of the short-term transactional nature of the electric and gas markets, and the fact that competitive changes happen quickly, timely and effective resolution of complaints has become more crucial. If the Commission is to use lighter-handed forms of regulation, to maintain balance and equity it must have an organized and fair complaint process to ensure that complainants will receive adequate protection and redress under the statutes administered and enforced by the Commission. An effective complaint

[1] 18 CFR 385.206 (1998).

[2] 18 CFR Part 343 (1998).

[3] 18 CFR 385.604–606 (1998).

[4] Pub. L. 104–320, 110 Stat. 3870 (October 19, 1996).

[5] 18 CFR Part 1b (1998).

[6] The Pipeline Customer Coalition consists of the American Iron and Steel Institute, the LDC Caucus of the American Gas Association, American Public Gas Association, Associated Gas Distributors, Georgia Industrial Group, Independent Petroleum Association of America, Natural Gas Supply Association, Process Gas Consumers, and United Distribution Companies.

[7] Comments and Petition of the Pipeline Customer Coalition, and Amended Petition of the Pipeline Customer Coalition for Proposed Rulemaking filed on May 31, 1996, and April 3, 1997, respectively, in Regulation of Negotiated Transportation Services of Natural Gas Pipelines, *et al.*, Docket Nos. RM96–7–000 and RM96–12–000.

[8] Comments and Petition of the Interstate Natural Gas Association of America filed on April 10, 1997, in Regulation of Negotiated Transportation Services of Natural Gas Pipelines, *et al.*, Docket Nos. RM96–7–000, RM96–12–000, and RM97–4–000.

[9] Symposium on Process and Reform: Commission Complaint Procedures, Docket No. PL98–4–000.

[10] The Electric Working Group includes representatives from American Public Power Association, Coalition for a Competitive Electric Market, Edison Electric Institute, Electric Power Supply Association, Illinois Municipal Electric Agency, National Rural Electric Cooperative Association and Transmission Access Policy Study Group, working with the assistance and support of the American Arbitration Association.

[11] Electric Industry Dispute Resolution Working Group Recommendations and Proposed Procedures for Dispute Resolution filed on June 23, 1998, in Symposium on Process and Reform: Commission Complaint Procedures, Docket No. PL98–4–000.

process would better enable the Commission to monitor activities in the marketplace and provides an early warning system for identifying potential problems. It is in this context that the Commission is proposing changes to its complaint procedures. Revised complaint procedures are necessary to provide assurance to the public that complaints will receive appropriate consideration and that complaints that require expedited consideration will receive it.

The Commission has received a number of proposals concerning its complaint procedures. These proposals are summarized below, and the Commission invites interested parties to comment on these proposals. The Commission has constructed its own proposal, incorporating what appeared to be the best, and most practical elements of the various proposals and the principles recommended by the Staff initiative. The goals of the Commission's proposed revisions are to encourage and support the resolution of disputes by the parties themselves prior to the filing of a formal complaint, to organize the complaint procedures so that all complaints are handled in a timely, fair manner based upon an appropriate record, and to assure those complaints deserving of expedition receive it, recognizing that the appropriate process to be used for a particular complaint depends on many factors including the parties involved, the harm alleged, and the facts and circumstances surrounding the complaint. The Commission's proposal furthers the goals of promoting early resolution of contested matters and complaints, and focusing on consensual decisionmaking, ADR, and expeditious decisionmaking.

B. Complaint Procedures

1. Proposed Revisions to the Complaint Procedures

Many disputes can be resolved by parties on an informal basis. Therefore, prior to employing any formal procedures, the Commission strongly encourages potential complainants to use informal procedures to resolve disputes to the extent possible. These informal procedures could include those contained in the tariffs of the pipelines and electric utilities, the Commission's Enforcement Hotline, or other types of voluntary ADR techniques. The Commission believes that informal resolution of disputes will be such an important element to the success of the Commission's revised complaint procedures, that it is prepared to make available resources for parties to call upon to aid their attempts to informally resolve disputes. For example, parties can employ the Commission's Enforcement Hotline to receive information, informal Staff opinions, or assistance in reaching a consensual resolution of a dispute. The Commission requests comments on other types of professional assistance the Commission might provide to facilitate informal dispute resolution. The Commission also requests comments on whether informal procedures prior to filing a formal complaint should be mandatory.

To the extent potential complaints can be resolved, or the number of issues in a potential complaint can be reduced informally, the Commission can then focus its attention on those complaints concerning the most difficult and contentious issues. Therefore, in the proposed rules the Commission proposes to require complaints to contain a statement of (1) whether informal procedures, including ADR or the Commission's Enforcement Hotline, were used or why they were not used and (2) whether the complainant believes that informal procedures, such as ADR, could successfully resolve the complaint if it were under Commission supervision.

Under the proposed revisions in this NOPR, the process at the Commission would begin with the filing of a formal complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure.

The Commission proposes to revise Rule 206 to require that a complaint must satisfy certain informational requirements. Specifically, a complaint would have to: (1) clearly identify the action or inaction which is alleged to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful, or is contrary to a certificate or license condition, a tariff provision, or the terms of an exemption, (2) provide an explanation of the reasons why the action or inaction is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful, or is contrary to a condition in a certificate or license, a tariff provision, or the terms of an exemption, (3) set forth the business, commercial, economic or other issues presented by the action or inaction, service or practice as such relate to or affect the complainant, or, where applicable, the environmental or safety issues presented by the action or inaction, (4) quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction, or, where applicable, the environmental or safety impacts of the action or inaction, (5) indicate the practical and operational impacts imposed upon the complainant as a result of the action or inaction, or, where applicable, the environmental or safety impacts of the action or inaction, (6) state whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum, (7) state the specific relief requested, including interim relief to preserve the status quo, and in cases of interim relief, a detailed explanation why such relief is required addressing (a) the likelihood of success on the merits, (b) the nature and extent of the harm if interim relief is denied, (c) the balance of the relevant interests, *i.e.*, the hardship to nonmovant if interim relief is granted contrasted with the hardship to the movant if interim relief is denied, and (d) the effect, if any, of the decision on the public interest, (8) include all documents that support the facts in the complaint, including, but not limited to, contracts, affidavits, and testimony, and (9) state whether the Enforcement Hotline or other informal procedures were used, whether the complainant believes that ADR under the Commission's supervision could successfully resolve the complaint, and describe the formal or consensual process the complainant proposes for resolving the complaint.

In addition, the Commission proposes to revise Rule 206 to require a complainant to serve a copy of the complaint on the respondent and all others who the complainant knows will be affected simultaneously with filing at the Commission. Simultaneous service can be accomplished through electronic mail, fax, express delivery, or messenger. This would be a change from current Commission rules on service for other types of pleadings. The Commission is particularly interested in receiving comments on whether simultaneous service to affected parties is practical.

The Commission proposes to strictly enforce the filing requirements of Rule 206. Requiring a complainant to set forth its case in some detail should ensure that the respondent, interested parties, and the Commission have adequate information early in the complaint process so that each party may begin analyzing the complaint and consider proposed courses of action.

After a complaint is filed with the Commission, a public notice of the complaint would be issued within 2 days to give interested parties an opportunity to intervene and be heard.

This will be a ministerial action. The Commission does not propose to screen the complaint for sufficiency at that point. After an answer is filed, the Commission will consider any alleged deficiencies in the complaint. The Commission will exercise its discretion to determine the sufficiency of a complaint. However, a complainant who fails to meet the Commission's filing requirements runs the risk that its complaint will be dismissed for a failure to meet its burden unless it adequately explains why the information was not presented. The Commission also proposes to revise Rule 206 to provide that answers to complaints, comments, and interventions must be filed no later than 10 days after the complaint is filed. This process is patterned after the interstate natural gas pipeline rate rules where intervention and answer dates are triggered by the filing date and not the notice date.[12] This would be a change from the current complaint rules. The Commission requests comment as to whether 10 days from the date of filing of the complaint is adequate in all circumstances to file answers, comments, and interventions.

Certain sections of Part 343, Procedural Rules Applicable to Oil Pipeline Proceedings, will need to be revised to conform with the proposed changes to the Commission's complaint procedures. Therefore, the Commission proposes to revise paragraph (c)(3) of § 343.2 of the Commission's regulations to require that complaints involving non-rate matters must also comply with Rule 206. The Commission also proposes to revise § 343.4(a) to require that answers must be filed in accordance with Rule 206. Thus, the time for answers for oil pipeline complaints will be reduced from 30 days to 10 days after the filing of the complaint.

As a corollary to the more detailed filing requirements for a complaint, the Commission proposes to strictly enforce Rule 213 of the Commission's Rules of Practice and Procedure, which requires that an answer to a complaint ''admit or deny, specifically and in detail, each material allegation of the pleading answered'' and ''set forth every defense relied on.'' [13] This would help to define the controverted issues early and thus provide a framework for the Commission to decide on a procedure for resolving the dispute as quickly as possible. In addition, the Commission is proposing to revise Rule 213 to require that answers to complaints must include all documents that support the facts in the answer, including, but not limited to contracts, affidavits, and testimony. To the extent that a respondent does not comply with Rule 213, the Commission will consider granting the relief requested by the complainant based upon the pleadings alone. Respondents filing what is in essence a general denial would do so at their own peril. The respondent should also describe the formal or consensual process it proposes for resolving the complaint.

Once an answer has been filed, there are basically three different procedures that the Commission proposes to use to resolve issues raised in complaints. This is not a comprehensive list and the Commission asks for comments on others that might be appropriate. The objective in all instances would be selection of a fair and equitable process that would allow a resolution of the complaint as expeditiously as possible given the issues, parties, and circumstances. The Commission does not propose to establish any overall time limits within which complaints must be resolved, given the variability of possible issues and the limited extent of the Commission's resources. The Commission, however, would be committed to resolving complaints in the most expeditious manner possible. In this regard, therefore, the Commission indicates below some target time frames for the resolution of complaints depending on the type of procedure used.

The first possible procedural path for a complaint would be for a complaint to be decided by the Commission based upon the pleadings alone. In cases where the complaint is to be decided based upon the pleadings alone, the Commission would endeavor to issue an order on the complaint within 60–90 days after the answer is filed. The length of time in which an order could be issued would depend on the complexity of the complaint. A complaint concerning a straightforward interpretation of a tariff or contract should be resolved in 60 days or less, while a complaint concerning policy issues closely intertwined with difficult interpretation issues might take longer.

If a complaint does not lend itself to a decision on the merits based upon the pleadings, the Commission could order an expedited hearing before an ALJ, convene a conference, or assign the complaint to an ADR procedure, where appropriate. If the Commission takes one of these procedural paths, the intention is to issue an order selecting one of these paths within approximately 30 days after the answer is filed. The second possible procedural path for a complaint is an expedited hearing. In cases where the complaint is set for an expedited hearing before an ALJ, the objective would be to have an initial decision rendered within 60 days. The Commission's objective then would be to issue its order on an appeal from the initial decision concerning a complaint within 90 days after briefs opposing exceptions are filed. The overall time in which it would take to issue an order on exceptions from an initial decision could be reduced to the extent that parties can agree on reducing the time currently allowed for the filing of briefs on an opposing exceptions.[14] If there are no exceptions to the initial decision, then under Rule 712 [15] the ALJ's decision would become the final agency action.

Where the parties have agreed that ADR under the Commission's auspices would be beneficial, the Commission could issue an order directing that the complaint be resolved through alternative dispute resolution techniques such as mediation, arbitration, mini trial, or proceeding before a settlement judge. This is the third procedural path a complaint may take. Since ADR is a voluntary process, the time period in which a decision can be rendered is largely in the control of the affected parties. The Commission's objective, however, would be to issue any subsequent orders on complaints resolved through ADR in a meaningful time period.

It is important for parties to have a role in determining the process that should be used for resolving a complaint. If parties are unable to resolve their dispute through informal procedures, the Commission encourages them to at least agree on the procedures for resolving a formal complaint filed with the Commission. The parties should also inform the Commission when a decision is needed in order to satisfy their business needs. Under the proposed revisions, if the parties reach agreement concerning the procedures to be used and the requested time for action, every effort would be made to honor the proposal of the parties. Parties need to understand that the Commission's ability to resolve a complaint in a timely and meaningful manner will be enhanced if the parties can at least agree on a process if not the substance. Parties should also recognize that the more formal the complaint procedure the more time it is likely to

[12] 18 CFR 154.210 (1998).

[13] 18 CFR 385.213(c)(1998).

[14] Pursuant to Rule 711, 18 CFR 385.711 (1998), briefs on exceptions are due not later than 30 days after service of the initial decision and briefs opposing exceptions are due 20 days thereafter.

[15] 18 CFR 385.712 (1998).

take the Commission to render a decision.

There is undoubtedly a category of case that would require immediate action by the Commission. To the extent the Commission has the authority, the Commission could issue an order expeditiously to preserve the status quo pending a final resolution of the complaint on the merits.

In its proposal the Electric Working Group suggested that relief should be granted based on the following factors: (1) likelihood of success on the merits; (2) whether irreparable injury to complainant will occur if the relief is not granted; (3) whether the injury outweighs harm to the respondent or other parties to the proceeding if the relief is granted; and (4) other public interest considerations. These are the standards used by Courts of Appeal when considering requests to stay administrative orders, as well as deciding whether to grant preliminary relief,[16] but are not the standards currently used by the Commission to decide whether to stay its own orders.[17] The Commission proposes to adopt the standards proposed by the Electric Working Group but requests comments on whether other standards should be established for granting such interim relief.

2. Alternative Complaint Procedures

The procedures proposed here must be viewed against a background of a more complex energy market where regulated and unregulated companies are driven increasingly by competitive market forces. The dynamics of competitive markets and lighter-handed Commission regulation can be expected to change the nature of the complaints received. The Commission will be faced both with unusual commercial problems and with requests for relief in the context of rapidly moving competitive circumstances. The Commission therefore anticipates that greater demands will be placed upon it to respond expeditiously to resolve disputes.

The question the Commission now confronts is how to structure its processes to ensure rapid response to market issues. One of the elements of the Staff's proposal was for certain disputes to be assigned to Office Directors for resolution by Letter Order. The Electric Working Group also suggested that, where appropriate, a complaint could be assigned to an Office Director who would prepare a Letter Order for issuance by the Commission. It may be helpful to employ a Letter Order or delegation of some complaint responsibilities to staff or ALJs to achieve expedition where possible. Complaints represent an important source of information that allows the Commission to monitor activities in the marketplace. Based on complaints, the Commission is often able to identify instances where there is a need for policy change or development. Complaints frequently plow new legal ground as well. Thus, delegation of complaint authority would not be implemented in a way that would impair the Commission's growing monitoring role or exclude Commissioners from decisions involving complex fact issues, new policy concerns, or unresolved law or other important issues. In a limited and well-defined category of cases, perhaps delegations could be adopted that handle more routine commercial issues with real expedition, subject to rehearing before the Commission.

The Commission is therefore interested in comment on whether there may be a limited category of cases which could be handled by delegation or Commission letter order to expedite resolution without compromising the full Commission's oversight responsibility. In seeking comment in this area, the Commission is preparing itself for types and numbers of cases that are likely to arise from the competitive market and reinforcing its commitment to be more responsive to the evolving market. The Commission may also achieve expedition through deadlines for completing specific processes.

One avenue for resolving requests for interim relief expeditiously might be assignment to an administrative law judge. An ALJ could hold oral argument to determine whether to issue an order that would preserve the status quo pending a final decision on the merits of the complaint. In cases where such interim relief is requested, the ALJ could issue an order shortly after the oral argument. The ALJ would have the discretion to determine an appropriate time for action based upon the nature of the complaint. The Commission requests comment on whether this procedure would be an advantage in expediting the resolution of requests for immediate relief.

In addition to the procedures discussed above, the Commission would like to receive comments on whether there should be special procedures established in cases where small customers allege harm or there is a small amount of money in controversy. The Commission envisions that such procedures could be akin to a small claims court. The Commission requests comments on how it should define a small customer, and what could be an appropriate ceiling level for the amount in controversy.

The Commission requests comments on whether a complainant filing under a small claims court type procedure should be required to satisfy all the informational requirements contained in revised Rule 206. The Commission, for example, could create a standard short-form complaint in which the complainant would state why it is eligible for the procedure, provides a brief description of the facts and circumstances surrounding the complaint, and states the requested relief. The Commission could make such a short-form complaint available in both paper and electronic format and could even provide for the electronic filing of such a complaint. Similarly, the Commission could reduce the requirements for an answer under this procedure. There are a number of ways in which the Commission could handle a short-form complaint. An Office Director, acting under delegated authority, could issue an order based upon the pleadings. An ALJ could be assigned to issue orders on such complaints and where necessary hear arguments. Finally, a single Commissioner could be designated to decide such complaints, similar to the Motions Commissioner under the existing rules for interlocutory appeals.[18] In any of these instances, the Commission envisions that an order would be issued within 30 days after the complaint is filed. The order could be appealable to the Commission. The Commission requests comments on these proposals and other procedures that could be used in lieu of the proposed small claims court type process.

3. Other Approaches

The Commission has formulated proposed changes in its complaint procedures that incorporate what appeared to be the best and most practical elements from the various proposals it has received. Among those was one from the staff initiative. The FERC First Staff proposed a multi-disciplinary Commission team that would identify one of four potential resolution paths for a complaint: (1) ADR, if settlement is likely; (2) injunctive type relief from an

[16] *See* Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

[17] In acting on requests for stay, the Commission applies the standard set forth in section 705 of the Administrative Procedure Act, 5 USC 705 (1988), *i.e.*, the stay will be granted if ''justice so requires.''

[18] 18 CFR 385.715 (1998).

administrative law judge (ALJ) if the complaint is time sensitive; (3) an order issued by the Commission or an office director by delegation where clear precedent exists and where there are no genuine issues of material fact in dispute; and (4) hearing for a fact intensive dispute that would benefit from the development of an evidentiary record.

The Commission also has received three comprehensive industry proposals concerning revisions to the Commission's complaint procedures. These proposals, which are summarized below, were filed by the Coalition, INGAA, and the Electric Working Group. Their complete proposals can be found in their respective pleadings. The Commission requests parties to comment on these industry proposals. Given that the proposals are industry specific, the comments should include the extent to which such proposals, with modifications, could be adopted by the Commission on a generic basis, as well as what aspects of such proposals could be incorporated into the Commission's proposal discussed above. Although comments have been filed on the Coalition's, the Electric Working Group's, and INGAA's proposals, the Commission believes that parties may wish to formally comment given the Commission's plan to revise its complaint procedures on a generic basis.

a. The Coalition's Proposal. The Coalition's proposal would require natural gas pipelines' tariffs to contain a complaint procedure and would formalize procedures for use of the Commission's Hotline. A complainant's use of the Hotline and a pipeline's complaint procedure would be a prerequisite to using the expedited complaint procedures contained in the Commission's regulations.

A complaint would qualify for the expedited procedure if it concerns (1) an interpretation of the terms and conditions of a pipeline's tariff, a pipeline's executed service agreement, or a Commission approved settlement agreement, (2) an allegation that a pipeline is engaging in activities involving undue preference, undue discrimination, or unfair competition or which involve violations of law or Commission regulations, and (3) a proposal by the complainant to revise an executed service agreement, an existing pipeline tariff other than a change in the pipeline's approved rates or rate structure, or an operating practice not mentioned or defined in the pipeline tariff.

Each of the categories would require the Commission to meet strict time deadlines. For example, the Commission would have a total of 90 days to rule on complaints concerning interpretation issues.

Complaints concerning rates or rate structure would not qualify for the expedited procedure. The Commission would still have to summarily dispose of such complaints, as well as other complaints not eligible for the expedited procedures, within 120 days of the notice date or prescribe further procedures with a time for final action.

A complaint would have to contain a statement of the complaint with business reasons (including financial impact), indicate the absence of other regulatory relief, the specific relief or remedy requested, and a notice. Prior to issuing a notice, the Commission could send the complaint back to the filing party if it was deficient.

A notice would have to be issued in 15 days. The Coalition proposal would give a total of 45 days for interventions, answers and replies. Interventions would be due 12 days from the notice, answers would be due 30 days from the notice, and replies would be due 45 days from the notice. After all the pleadings are received, the Commission would have 30 to 120 days to act on the complaint depending on the type of complaint and the procedural mechanism chosen by the Commission, that is, summary disposition, a technical conference, hearing, etc.

b. INGAA's Proposal. Under INGA's proposal complaints eligible for expedited consideration are those for the interpretation of the terms and conditions of a natural gas company's tariff or service agreements. Included would also be complaints alleging undue discrimination in providing transportation and storage services. Complaints to change a pipeline's tariff or executed service agreement would not fall under this procedure, but under the existing Rule 206 procedure.

INGAA's proposal consists initially of informal negotiations between designated representatives of the pipeline and the complainant. If these negotiations are unsuccessful within a time certain, usually four business days, the complainant can seek informal advice from designated FERC Staff through a codified hotline procedure. If the parties with the help of the Staff cannot resolve the dispute within a time certain, usually nine days after initial contact of the pipeline by the Staff, the complainant has two options.

The complainant and the pipeline may agree to arbitration. The proposed procedures are similar to those already in place, but would provide for a direct appeal to the Commission of the arbitrator's decision if it is inconsistent with Commission orders, policies, regulations, or jeopardizes the operational integrity of the pipeline. These procedures would be subject to time limits.

The other option would be for the complainant to proceed directly from the hotline informal advice to the Commission under the formal complaint procedures under Rule 206. The Staff person who handled the Hotline procedure would indicate to the Commission the need for expediting the decision based on the materials that came out during the informal advice stage. No deadlines would be suggested to the Commission so as to assure the discretion it needs for dealing with such complaints.

The informal procedures, however, would not be prerequisites for a party to file a complaint under Rule 206.

c. The Electric Working Group's Proposal. Under the Electric Working Group's proposal, parties may agree at any time to ADR, including binding arbitration, of commercial disputes and issues that do not involve challenges to the justness and reasonableness of the rates, terms and conditions of filed contracts, tariffs or other rate schedules.

The disputing parties may initiate unilateral or bilateral contacts with a Dispute Resolution Task Force or the Enforcement Hotline.

For a fifteen month pilot period, complainant must submit a dispute to mediation prior to filing a complaint (other than complaints seeking to change filed rates, terms and conditions of service, or seeking expedited relief on the grounds of irreparable harm). The parties must engage in mediation efforts for a period not to exceed thirty days, with the objective of either settling the dispute or narrowing the policy issues and factual disputes remaining to be resolved.

The Electric Working Group suggested that the Commission create a Division of Dispute Resolution (DDR) that will determine which of several dispute resolution mechanisms will be employed to resolve those disputes not resolved by the pre-complaint procedures.

The DDR would select the appropriate procedure depending upon the issues presented by the complaint: (1) assignment to an Office Director who will prepare a Letter Order, for issuance by the Commission where required, that resolves the matter; (2) assignment to ADR procedures; (3) assignment to an ALJ who will set a schedule for cross motions for summary judgment and will issue a recommended decision; (4) assignment to an ALJ for hearing on an

expedited basis or a schedule to be determined by the ALJ; and (5) referral to the Commission.

C. Proposed Revisions to the ADR Regulations

In addition to revising the Commission's complaint procedures, the Commission is also proposing revisions to its ADR regulations in Rules 604, 605, and 606 of the Commission's Rules of Practice and Procedure. The Commission's ADR regulations, which were promulgated in Order No. 578, are based on the provisions of the Administrative Dispute Resolution Act (ADRA) of 1990.[19] In comments filed in Docket No. PL98–4–000, the American Arbitration Association (AAA) submits that several of the ADRA procedures adopted in the Commission's regulations actually impede the use of ADR. AAA states that under the 1990 Act, the disclosure requirements of the Freedom of Information Act (FOIA) preempted the confidentiality provisions of the ADRA. AAA states that materials in the government's possession or in the possession of a neutral who was a government employee were subject to release under FOIA unless a FOIA exemption applied. AAA contends that since confidentiality is essential to the effective use of mediation, the disclosure requirements contained in the 1990 ADRA and adopted by the Commission has a chilling effect upon the voluntary use of mediation.

AAA also asserts that voluntary use of arbitration has been curtailed by the inclusion of opt-out provisions in Rules 604 and 605. AAA states that the 1990 ADRA allowed an agency to terminate the arbitration proceeding at any point prior to the issuance of an award. In addition, an agency could vacate or opt-out of an arbitration award within 30 days after the service of the award. This 30 day opt-out period could be extended another 30 days at the discretion of the agency.

In 1996 Congress passed the Administrative Dispute Resolution Act of 1996. [20] The ADRA of 1996 provides that the confidentiality provisions of the Act pre-empt the disclosure requirements of the FOIA. In addition, the termination and opt-out provisions are eliminated. AAA submits that the Commission should amend its Rules of Practice and Procedure to bring existing Rules 604, 605, and 606 into compliance with the confidentiality, termination and opt-out provisions of the 1996 ADRA.

In addition, AAA asserts that the Commission should reverse the current requirement that any settlement agreement reached during an ADR process will be subject to the notice and comment provisions of Rule 602 ''unless the decisional authority, upon motion or otherwise, orders a different procedure.'' [21] AAA submits that the provision should indicate that agreements reached through mediation are not subject to notice and comment unless the Commission takes affirmative action within a set period of time (30 days). AAA believes that voluntary submission to ADR would increase if the procedural protections discussed above were enacted.

The Commission is proposing revisions to its regulations to address these concerns and requests parties to comment on them and any other related issues. The Commission proposes to revise Rules 604, 605 and 606 to conform to the 1996 ADRA by eliminating the termination and opt-out provisions, and providing that the confidentiality provisions of the 1996 ADRA pre-empt the disclosure requirements of the FOIA. The Commission is not proposing to revise the regulations to indicate that settlement agreements reached through ADR are not subject to the notice and comment requirements of Rule 602 unless the Commission takes affirmative action within 30 days, as suggested by the AAA. Such a change is not required to conform to the 1996 ADRA. Further, because in many instances settlements entered into by regulated companies can affect parties who were not part of the ADR process, it appears appropriate for the Commission to receive public comments on settlement agreements reached through ADR processes. However, the Commission requests comments on this issue.

D. Codification of Enforcement Hotline Procedures

To make the Enforcement Hotline easier to use, the Commission is proposing to codify the current Hotline procedures in a new Section 1b.21. The proposed procedures provide that the Hotline procedures may be used to address quickly and informally any matter within the Commission's jurisdiction, including disputes concerning natural gas pipelines, oil pipelines, electric utilities and hydroelectric projects. The Hotline Staff is authorized to provide information to the public and to give informal staff opinions that do not bind the General Counsel or the Commission. Any person may seek information or the informal resolution of a dispute by calling or writing to the Hotline. The Hotline Staff will informally seek information from the caller and any respondent, as appropriate. The Hotline Staff will attempt to resolve disputes without litigation or other formal proceedings. The Hotline Staff may not resolve matters that are before the Commission in docketed proceedings.

The proposed procedures also state that all information and documents obtained through the Hotline shall be treated as non-public by the Commission and its staff consistent with the provisions of section 1b.9. Calls to the Hotline may be made anonymously. Self-identification by the complainant makes it easier to provide a speedier resolution. Any person who contacts the Hotline is not precluded from filing a formal action with the Commission if discussions are unsuccessful at resolving the matter. A caller may terminate use of the Hotline procedures at any time.

The Hotline currently operates according to the procedures described above. The Commission proposes to codify them to alert the public to the availability of the Hotline and to provide information on the scope of the service.

III. Information Collection Statement

The following collection of information contained in this proposed rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[22] FERC identifies the information provided under 18 CFR Part 385 as FERC–600. FERC–600 consolidates certain existing information collection requirements from the various FERC program offices into one information collection number and accounts for the incremental burden placed on persons filing under the proposed regulations.

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the burden on persons filing under the revised complaint procedures, including the use of automated information techniques.

[19] 5 U.S.C. 571–83 (1988), as amended by Pub. L. 102–354, 106 Stat. 944 (Aug. 26, 1992.)

[20] Pub. L. 104–320, 110 Stat. 3870 (October 19, 1996).

[21] 18 CFR 385.604(a)(5)(1998).

[22] 44 U.S.C. 3507(d) (1988).

Estimated Annual Burden: The burden estimates for complying with this proposed rule are as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–600	75	75	14	1,050

Total Annual Hours for Collection (Reporting + record keeping, if appropriate) = 1,050.

Based on the Commission's experience with complaints, it is estimated that about 75 filings per year will be made over the next three years at a burden of 14 hours per filing, for a total annual burden of 1,050 hours under the proposed regulations. As described in this proposed rule, the Commission's expectation is that receiving more information in the complaint will lessen the subsequent burden on parties and will shorten the time for resolving a complaint. There is no annual reporting burden under the current regulations.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Annualized Capital/Startup Costs—$55,260 Annualized Costs(Operations and Maintenance) _____ Total Annualized Costs $55,260. Average cost per Respondent $736.80.

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[23] Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collection to OMB.

Title: FERC–600, Rules of Practice and Procedure

Action: Proposed Data Collection.

*OMB Control No. 1902–*_____

The respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: Infrequent.

Necessity of Information: The proposed rule requires persons filing complaints and answers to complaints with the Commission to satisfy certain informational requirements, and to provide supporting documentation for the allegations in a complaint and answer to a complaint. The information will allow the Commission to properly evaluate a complaint and resolve it in a timely manner.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements. The Commission's Offices of General Counsel, Pipeline Regulation, Electric Power Regulation, and Hydropower Licensing, will use the data to make decisions with respect to the merits of a complaint. This internal review determination involves among, other things, an examination of adequacy of design, cost, reliability, redundancy of the information to be required. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the interstate natural gas pipeline, oil pipeline, electric and hydroelectric industries.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 273–0873, e-mail: michael.miller@ferc.fed.us].

For submitting comments concerning the collection of information and the associated burden estimate, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC, 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285.

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[24] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[25] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[26] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[27] The Commission is not required to make such analyses if a rule would not have such an effect.[28]

The Commission does not believe that this rule would have such an impact on small entities. The majority of complaints filed with the Commission have been by companies who do not meet the RFA's definition of a small entity whether or not they are under the Commission's jurisdiction.[29] Further, the Commission is proposing to speed up the complaint process in general and in particular for those cases where small business entities have been the subject of an alleged detriment. This proposed rule will be beneficial to small entities. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. An original and 14 copies of comments must be filed with the Commission no

[23] 5 CFR 1320.11

[24] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[25] 18 CFR 380.4.

[26] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[27] 5 U.S.C. 601–612 (1988).

[28] 5 U.S.C. 605(b)(1988).

[29] 5 U.S.C. 601(3)(1988).

later than October 5, 1998. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM98–13–000. All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours.

Additionally, comments should be submitted electronically. Commenters are encouraged to file comments using Internet E–Mail. Comments should be submitted through the Internet by E–Mail to comment.rm@ferc.fed.us in the following format: on the subject line, specify Docket No. RM98–13–000; in the body of the E–Mail message, specify the name of the filing entity and the name, telephone number and E–Mail address of a contact person; and attach the comment in WordPerfect® 6.1 or lower format or in ASCII format as an attachment to the E–Mail message. The Commission will send a reply to the E–Mail to acknowledge receipt. Questions or comments on electronic filing using Internet E–Mail should be directed to Marvin Rosenberg at 202–208–1283, E–Mail address marvin.rosenberg@ferc.fed.us.

Commenters also can submit comments on computer diskette in WordPerfect® 6.1 or lower format or in ASCII format, with the name of the filer and Docket No. RM98–13–000 on the outside of the diskette.

List of subjects

18 CFR Part 1b

Investigations.

18 CFR Part 343

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend Parts 1b, 343, and 385, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 1b—RULES RELATING TO INVESTIGATIONS

1. The authority citation for part 1b is amended to read as follows:

Authority: 15 U.S.C. 717 *et seq.*; 16 U.S.C. 792 *et seq.*; 49 U.S.C. 60502; 49 App. U.S.C. 1–85; 42 U.S.C. 7101–7352; E.O. 12009, 42 FR 46267.

2. In § 1b.1, new paragraph (d) is added to read as follows:

* * * * *

(d) *Enforcement Hotline* is a forum in which to address quickly and informally any matter within the Commission's jurisdiction concerning natural gas pipelines, oil pipelines, electric utilities and hydroelectric projects.

3. In part 1b, new section 1b.21 is added to read as follows:

§ 1b.21 Enforcement Hotline.

(a) The Hotline Staff may provide information to the public and give informal staff opinions. The opinions given are not binding on the General Counsel or the Commission.

(b) Any person may seek information or the informal resolution of a dispute by calling or writing to the Hotline at the telephone number and address in paragraph (f) of this section. The Hotline Staff will informally seek information from the caller and any respondent, as appropriate. The Hotline Staff will attempt to resolve disputes without litigation or other formal proceedings. The Hotline Staff may not resolve matters that are before the Commission in docketed proceedings.

(c) All information and documents obtained through the Hotline Staff shall be treated as non-public by the Commission and its staff consistent with the provisions of § 1b.9 of this part.

(d) Calls to the Hotline may be made anonymously.

(e) Any person who contacts the Hotline is not precluded from filing a formal action with the Commission if discussions are unsuccessful at resolving the matter. A caller may terminate use of the Hotline procedure at any time.

(f) The Hotline may be reached by calling (202) 208–1390 or toll free (877) 303–4340 or writing to: Enforcement Hotline, Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426.

PART 343—PROCEDURAL RULES APPLICABLE TO OIL PIPELINE PROCEEDINGS

1. The authority citation for part 343 continues to read as follows:

Authority: 5 U.S.C. 571–583; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

2. In § 343.2 paragraph (c)(3) is revised to read as follows:

§ 343.2 Requirements for filing interventions, protests and complaints.

* * * * *

(c) * * *

(3) *Non-rate matters.* A protest or complaint filed against a carrier's operations or practices, other than rates, must allege reasonable grounds for asserting that the operations or practices violate a provision of the Interstate Commerce Act, or of the Commission's regulations. In addition to meeting the requirements of this paragraph, a complaint must also comply with the requirements of Rule 206.

* * * * *

3. In § 343.4 paragraph (a) is revised to read as follows:

§ 343.4 Procedures on complaints.

(a) *Responses.* The carrier must file an answer to a complaint filed pursuant to section 13(1) of the Interstate Commerce Act within 10 days after the filing of the complaint in accordance with Rule 206.

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

2. In § 385.206, existing paragraph (b) is redesignated paragraph (e) and is revised, existing paragraph (c) is redesignated paragraph (g), and new paragraphs (b), (c), (d), and (f) are added to read as follows:

§ 385.206 Complaints (Rule 206).

* * * * *

(b) *Contents.* A complaint must:

(1) Clearly identify the action or inaction which is alleged to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful, or is contrary to a certificate or license condition, a tariff provision, or the terms of an exemption;

(2) Provide an explanation of the reasons why the action or inaction is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful, or is contrary to a certificate or license condition, a tariff provision, or the terms of an exemption;

(3) Set forth the business, commercial, economic or other issues presented by the action or inaction, service or practice as such relate to or affect the complainant, or, where applicable, the environmental or safety issues presented by the action or inaction;

(4) Quantify the financial impact or burden (if any) created for the

complainant as a result of the action or inaction, or, where applicable, the environmental or safety impacts of the action or inaction;

(5) Indicate the practical and operational impacts imposed upon the complainant as a result of the action or inaction, or, where applicable, the environmental or safety impacts of the action or inaction;

(6) State whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum;

(7) State the specific relief, including interim relief to preserve the status quo, or remedy requested, and in cases seeking interim relief, a detailed explanation of why such relief is required addressing:

(i) The likelihood of success on the merits;

(ii) The nature and extent of the harm if interim relief is denied;

(iii) The balance of the relevant interests, *i.e.*, the hardship to nonmovant if interim relief is granted contrasted with the hardship to the movant if interim relief is denied; and

(iv) The effect, if any, of the decision on the public interest;

(8) Include all documents that support the facts in the complaint, including, but not limited, to contracts, affidavits, and testimony;

(9) State:

(i) Whether the Enforcement Hotline or other informal procedures were used;

(ii) Whether the complainant believes that alternative dispute resolution (ADR) under the Commission's supervision could successfully resolve the complaint;

(iii) What types of ADR procedures could be used; and

(iv) Describe any process that has been agreed on for resolving the complaint.

(c) *Service.* Any person filing a complaint must serve a copy of the complaint on the respondent and others the complainant knows will be affected simultaneously with filing at the Commission and must so affirm in the complaint. Simultaneous service can be accomplished through electronic mail, fax, express delivery, or messenger.

(d) *Notice.* A public notice of the complaint will be issued.

(e) *Answers, interventions and comments.* (1) Unless otherwise ordered by the Commission, any respondent to a complaint must file an answer with the Commission within 10 days after the complaint is filed.

(2) Interventions and comments are also due within 10 days after the complaint is filed.

(f) *Complaint resolution procedures.* One of the following procedures may be used to resolve complaints:

(1) The Commission may issue an order on the merits based upon the pleadings;

(2) In cases where the affected parties consent, the Commission may assign a case to be resolved through alternative dispute resolution procedures in accordance with §§ 385.603 through 385.606; or

(3) The Commission may convene a conference or establish a hearing, including an expedited hearing, before an ALJ.

3. In § 385.213 paragraph (c)(4) is added to read as follows:

§ 385.213 Answers (Rule 213).

* * * * *

(c) * * *

(4) An answer to a complaint must include all documents that support the facts in the answer, including, but not limited to, contracts, affidavits and testimony.

* * * * *

4. In § 385.604, paragraph (d)(3) is removed, paragraphs (d)(4), (d)(5), and (d)(6) are redesignated paragraphs (d)(3), (d)(4), and (d)(5), paragraph (g) is removed, and paragraph (d)(2) is revised to read as follows:

§ 385.604 Alternative means of dispute resolution (Rule 604).

* * * * *

(d) * * *

(2) For matters set for hearing under subpart E of this part, a proposal to use alternative means of dispute resolution must be filed with the presiding administrative law judge.

* * * * *

5. In § 385.605, paragraph (f) is removed, and paragraphs (a)(4) and (e)(2) are revised to read as follows:

§ 385.605 Arbitration (Rule 605).

(a) * * *

(4) An arbitration proceeding under this rule may be monitored as provided in Rule 604(f).

* * * * *

(e) * * *

(2) The award in an arbitration proceeding will become final 30 days after it is served on all parties.

* * * * *

6. In § 385.606 paragraph (d) is redesignated paragraph (d)(1) and paragraphs (d)(2) and (l) are added:

§ 385.606 Confidentiality in dispute resolution proceedings (Rule 606).

* * * * *

(d) * * *

(2) To qualify for the exemption established under paragraph (l) of this section, an alternative confidential procedure under this paragraph may not provide for less disclosure than confidential procedures otherwise provided under this rule.

* * * * *

(l) A dispute resolution communication that may not be disclosed under this rule shall also be exempt from disclosure under 5 U.S.C. 552(b)(3).

[FR Doc. 98–20997 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–6137–4]

Outer Continental Shelf Air Regulations Consistency Update for California

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

ACTION: Proposed rule—Consistency Update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the South Coast Air Quality Management District (South Coast AQMD) and Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The intended effect of approving the OCS requirements for the above Districts, contained in the Technical Support Document, is to regulate emissions from OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before September 8, 1998.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air

Docket (Air–4), Attn: Docket No. A–93–16 Section XVI, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the rule and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XVI. This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (Air–4), Attn: Docket No. A–93–16 Section XVI, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section XVI, Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1992, EPA promulgated 40 CFR part 55 [1], which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by two local air pollution control agencies. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

A. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the South Coast AQMD is designated as the COA.

1. *The following rules were submitted as revisions to existing requirements:*

Regulation IX New Source Performance Standard (Adopted 1/9/98)

Rule 1110.2 Emissions from Gaseous- and Liquid Fuel Internal Combustion Engines (Adopted 11/14/97)

Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/14/97)

Rule 1168 Adhesive Applications (Adopted 2/13/98)

Regulation XXX Title V Permits

Rule 3000 General (Adopted 11/14/97)

Rule 3001 Applicability (Adopted 11/14/97)

Rule 3002 Requirements (Adopted 11/14/97)

Rule 3003 Applications (Adopted 11/14/97)

Rule 3004 Permit Types and Content (Adopted 12/12/97)

Rule 3005 Permit Revisions (Adopted 11/14/97)

Rule 3006 Public Participation (Adopted 11/14/97)

2. The following new rule was submitted:

Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 1/9/98)

B. After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the Ventura County APCD is designated as the COA.

1. *The following rules were submitted as revisions to existing requirements:*

Rule 26.1 New Source Review—Definitions (Adopted 1/13/98)

Rule 26.2 New Source Review—Requirements (Adopted 1/13/98)

Rule 26.3 New Source Review—Exemptions (Adopted 1/13/98)

Rule 26.6 New Source Review—Calculations (Adopted 1/13/98)

Rule 26.10 New Source Review—Prevention of Significant Deterioration (Adopted 1/13/98)

Rule 74.10 Components at Crude Oil and Natural Gas Production and Processing Facilities (Adopted 3/10/98)

2. *The following rules were submitted but will not be included because either they do not apply to OCS Sources or are administrative/procedural rules:*

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14 (c)(4).

Rule 26.4 New Source Review—Emission Banking (Adopted 1/13/98)
Rule 26.5 New Source Review—Community Bank (Adopted 1/13/98)

III. 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 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).

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 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 22, 1998.

Sally Seymour,

Acting Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. § 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(G), and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I and Part II).

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

3. Appendix A to CFR Part 55 is proposed to be amended by revising paragraphs (b)(7) and (8) under the heading ''California'' to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) Local requirements.

* * * * *

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources,* (Part I and Part II):

Rule 102 Definition of Terms (Adopted 6/13/97)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
Rule 118 Emergencies (Adopted 12/7/95)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (Adopted 12/7/95 except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 12/13/96)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 5/9/97) except (e)(6) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/9/97)
Rule 304.1 Analyses Fees (Adopted 5/9/97)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 5/9/97)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/9/97)
Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 2/14/97)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)

Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a)and (e)only (Adopted 7/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 11/17/95)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77) Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted 1/12/96)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio—Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
Regulation IX—New Source Performance Standards (Adopted 1/9/98)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 3/8/96)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/14/97)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous-and Liquid Fueled Internal Combustion Engines (Adopted 11/14/97)
Rule 1113 Architectural Coatings (Adopted 11/8/96)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 3/10/95)
Rule 1122 Solvent Degreasers (Adopted 7/11/97)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (rescinded 3/8/96)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/8/97)
Rule 1136 Wood Products Coatings (Adopted 6/14/96)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 1/9/98)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 7/14/95)
Rule 1168 Adhesive Applications (Adopted 2/13/98)
Rule 1171 Solvent Cleaning Operations (Adopted 9/13/96)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1301 General (Adopted 12/7/95)
Rule 1302 Definitions (Adopted 12/7/95)
Rule 1303 Requirements (Adopted 5/10/96)
Rule 1304 Exemptions (Adopted 6/14/96)
Rule 1306 Emission Calculations (Adopted 6/14/96)
Rule 1313 Permits to Operate (Adopted 12/7/95)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1605 Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 5/9/97)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 9/8/95)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 9/8/95)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 4/11/97)
Rule 2001 Applicability (Adopted 2/14/97)
Rule 2002 Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X) Emissions (Adopted 2/14/97)
Rule 2004 Requirements (Adopted 7/12/96) except (l)
Rule 2005 New Source Review for RECLAIM (Adopted 2/14/97) except (i)
Rule 2006 Permits (Adopted 12/7/95)
Rule 2007 Trading Requirements (Adopted 12/7/95)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 10/15/93)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions (Adopted 4/11/97)
Appendix A, Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions (Adopted 4/11/97)
Appendix A, Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 2/14/97) except (b)(1)(G) and (b)(3)(B)
Rule 2100 Registration of Portable Equipment (Adopted 7/11/97)
XXX Title V Permits
Rule 3000 General (Adopted 11/14/97)
Rule 3001 Applicability (Adopted 11/14/97)
Rule 3002 Requirements (Adopted 11/14/97)
Rule 3003 Applications (Adopted 11/14/97)
Rule 3004 Permit Types and Content (Adopted 11/14/97)
Rule 3005 Permit Revisions (Adopted 11/14/97)
Rule 3006 Public Participation (Adopted 11/14/97)
Rule 3007 Effect of Permit (Adopted 10/8/93)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

(8) The following requirements are contained in Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:

Rule 2 Definitions (Adopted 4/9/96)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 6/13/95)

Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Adopted 7/9/96)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 1/13/98)
Rule 26.2 New Source Review—Requirements (Adopted 1/13/98)
Rule 26.3 New Source Review—Exemptions (Adopted 1/13/98)
Rule 26.6 New Source Review—Calculations (Adopted 1/13/98)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 1/13/98)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
Rule 33.5 Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Appendix II–B Best Available Control Technology (BACT) Tables (Adopted 12/86)
Rule 42 Permit Fees (Adopted 4/15/97)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 6/14/94)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 9/10/96)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 7/9/96)
Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/98)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NOx (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 6/13/95)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 1/14/97)
Rule 74.23 Stationary Gas Turbines (Adopted 10/10/95)
Rule 74.24 Marine Coating Operations (Adopted 9/10/96)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 9/10/96)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 76 Federally Enforceable Limits on Potential to Emit (Adopted 10/10/95)
Appendix IV–A Soap Bubble Tests (Adopted 12/86)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)

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[FR Doc. 98–21033 Filed 8–5–98; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 120996A]

Magnuson Act Provisions; Essential Fish Habitat; Public Meeting

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

ACTION: Notice of meeting.

SUMMARY: The Alaska Region of the NMFS will hold an essential fish habitat (EFH) core team meeting to discuss the following items: strategic investment framework, EFH proposal process, habitat areas of particular concern (HAPC) proposals, EFH research needs,

integrating EFH information and research findings into the plan team process, and the role and responsibilities of the EFH core team.

DATES: The Alaska Region core EFH team will meet Monday September 14, 1998, and Tuesday, September 15, 1998, from 9:00 a.m. to 5:00 p.m. Monday and from 8:00 a.m. to 5:00 p.m. on Tuesday.

ADDRESSES: The EFH core team will meet in Seattle, Washington, at the NOAA, NMFS, Alaska Fisheries Science Center, 7600 Sand Point Way NE, in Building Four, Room 2039. Questions should be addressed to Habitat Conservation Division, ATTN: Cindy Hartmann, 709 W. 9th , Suite 461, P.O. Box 21668, Juneau, AK 99802–1668; telephone: (907) 586–7585.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann, NMFS, (907) 586–7585, e-mail: Cindy.Hartmann@noaa.gov; or Dave Witherell, North Pacific Fishery Management Council (NPFMC), (907) 271–2809, e-mail: David.Witherell@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The NMFS Alaska Region core EFH team was formally established in April, 1997, to implement the EFH provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act defined EFH as ''those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.'' In June 1998, the NPFMC adopted plan amendments for five fish management plans (FMPs) to incorporate EFH provisions. These provisions included identification and description of EFH including HAPC, identification of research and information needs, and identification of potential adverse effects on EFH due to fishing and non-fishing activities. The NPFMC is accepting proposals to identify HAPC, and to establish conservation measures to minimize, to the extent practicable, adverse impacts from fishing on HAPC. Proposals are due by Monday, August 17, 1998. Additional details and guidelines for HAPC proposals are available from the NPFMC office. At the September 14, 1998, meeting the EFH core team will be making recommendations on HAPC proposals and developing their own proposals. This meeting is open to the public.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cindy Hartmann, (907) 586–7235, at least 5 working days prior to the meeting date.

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

Dated: July 31, 1998.

Joseph R. Blum,

Acting Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 98–21069 Filed 8–5–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 151

Thursday, August 6, 1998

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 Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service intends to grant to Dalya dis Ticaret ve Pazarlama of Istanbul, Turkey, an exclusive license to U.S. Patent No. 5,766,662, issued June 16, 1998, and entitled, ''Dietary Fiber Gels for Preparing Calorie Reduced Foods.'' Notice of Availability for this invention was published in the **Federal Register** on January 8, 1998.

DATES: Comments must be received on or before October 5, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of the Director, National Center for Agricultural Utilization Research, Room 2042, 1815 N. University Street, Peoria, Illinois 61604.

FOR FURTHER INFORMATION CONTACT: Andrew Watkins of the National Center for Agricultural Utilization Research at the Peoria address given above; telephone: 309–681–6545.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as Dalya dis Ticaret ve Pazarlama has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–20979 Filed 8–5–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–075–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Application for Inspection and Certification of Animal Byproducts.

DATES: Comments on this notice must be received by October 5, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 98–075–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket No. 98–075–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information on the Application for Inspection and Certification of Animal Byproducts, contact Dr. John Gray, Special Assistant to the Deputy Administrator, Veterinary Medical Office, PPQ, APHIS, 4700 River Road Unit 129, Riverdale, MD 20737–1236, (301) 734–7633; or e-mail john.h.gray@usda.gov. For copies of more detailed information on the information collection, contact Ms. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Application for Inspection and Certification of Animal Byproducts.

OMB Number: 0579–0008.

Expiration Date of Approval: September 30, 1999.

Type of Request: Extension of approval of an information collection.

Abstract: U.S. exporters who wish to export certain animal byproducts to other countries must, in some instances, furnish the importing country with certificates that have been issued or endorsed by U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services (VS). These certificates attest to the class and quality of these products, and also attest that the products have been processed according to the conditions and requirements of the importing country. VS Form 16–24 is one such certificate.

The information requested on VS Form 16–24 is provided by the applicant and notifies us that the applicant desires to have us verify the processing of the product. After verifying the processing technique, we certify (on VS Form 16–24) that the product was processed according to the conditions and requirements of the importing country. Without this certification, the importing country would not accept the product, and the applicant would be unable to conduct business with that country.

The use of VS Form 16–24 has no impact on animal disease prevention or eradication activities in the United States. The form was developed strictly in response to the importation requirements of other countries.

The use of VS Form 16–24 provides ample space for the applicant to detail the processing technique used to make the product eligible to enter the importing country. The form also serves as the written agreement under which the applicant (the U.S. exporter) pays for the services we render in connection

with certifying that the product meets certain conditions required by the importing country.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) 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;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: U.S. exporters of animal byproducts.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 20.

Estimated total annual burden on respondents: 10 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of August 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–21038 Filed 8–5–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Interagency Executive Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee will meet on September 3, 1998, in Campbell's Conference Center, 104 W. Woodin, Chelan, Washington. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. This meeting will focus on rechartering, 1999 watershed restoration project proposals, Northwest Forest Plan monitoring report, and information sharing. All Eastern Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: July 23, 1998.

Mark Morris,

Administrative Officer, Wenatchee National Forest.

[FR Doc. 98–20962 Filed 8–5–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Yakima Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakima PIEC Advisory Committee will meet on August 27, 1998, at the Cle Elum Ranger District office, 803 W. 2nd. Street, Cle Elum, Washington. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. This meeting will focus on rechartering, Adaptive Management Area Subcommittee progress, 1999 watershed restoration project proposals, Northwest Forest Plan monitoring report, and information sharing. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: July 23, 1998.

Mark Morris,

Administrative Officer, Wenatchee National Forest.

[FR Doc. 98–20963 Filed 8–5–98; 8:45 am]

BILLING CODE 3410–11–M

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: Current Industrial Reports (Wave II Voluntary).

Form Number(s): M33J, MQ20A, MQ28A, MQ28C, MQ28F, MQ31A, MQ36C, MA20D, MA35N, MA36L.

Agency Approval Number: 0607–0206.

Type of Request: Revision of a currently approved collection.

Burden: 4,514 hours.

Number of Respondents: 2,550.

Avg Hours Per Response: About 45 minutes.

Needs and Uses: The Current Industrial Reports (CIR) program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions.

For clearance purposes, the approximately 72 CIR surveys are divided into ''waves.'' Each wave has an associated voluntary and mandatory clearance package, making 6 separate clearances. Each year, one wave (2 clearance packages) is submitted for review. This year we are submitting the voluntary and mandatory clearance packages for wave II. This clearance package contains ''counterpart'' forms. Counterpart forms were added to supplement some voluntary monthly and quarterly surveys to collect annual information on a mandatory basis from respondents not participating in the more frequent collections. In addition to requesting a three-year extension of OMB approval, in this request, we are revising some CIR surveys or changing reporting status or frequency.

Affected Public: Businesses or other for-profit organizations.

Frequency: Monthly, Quarterly, and Annually.

Respondent's Obligation: Monthly and Quarterly forms—Voluntary; Annual counterpart forms—Mandatory.

Legal Authority: Title 13 USC, Sections 131, 182, 224, and 225.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

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 5327, 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 Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 31, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–21007 Filed 8–5–98; 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 of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Foreign-Trade Zone (FTZ) Application.

Agency Form Number: N/A.

OMB Number: 0625–0139.

Type of Request: Regular Submission.

Estimated Burden: 9,314 hours.

Estimated Number of Applicants: 100.

Est. Avg. Hours Per Application: 20–120 hours (depending on the type of application).

Needs and Uses: The Foreign Trade Zones Application is the vehicle by which individual firms or organizations apply for foreign-trade zone (FTZ) status, for subzone status, or for expansion of an existing zone. The FTZ Act and Regulations require that an application with a description of the proposed project be made to the FTZ Board (19 U.S.C. 81b and 81f; 15 CFR § 400.24–26) before a license can be issued or a zone can be expanded. The Act and Regulations require that applications contain detailed information on facilities, financing, operational plans, proposed manufacturing operations, need, and economic impact. Manufacturing activity in zones, which is primarily conducted in subzones, can involve issues related to domestic industry and trade policy impact. Such applications must include specific information on the Customs-tariff related savings that result from zone procedures and the economic consequences of permitting such savings. The FTZ Board needs complete and accurate information on the proposed operation and its economic effects because the Act and Regulations authorize the Board to restrict or prohibit operations that are detrimental to the public interest.

Affected Public: State, local, or tribal governments or not-for-profit institutions applying for foreign trade zone status, for subzone status, or for modification of existing status.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a license, voluntary.

OMB Desk Officer: Victoria Baecher-Wassmer, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice.

Dated: July 31, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–21008 Filed 8–5–98; 8:45 am]

BILLING CODE 3510–DS–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 of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Annual Report from Foreign-Trade Zones.

Agency Form Number: ITA–359P.

OMB Number: 0625–0109.

Type of Request: Regular Submission.

Estimated Burden: 11,881 hours.

Estimated Number of Respondents: 150.

Est. Avg. Hours Per Response: 37 to 180 hours (depending on the size and structure of the foreign-trade zone).

Needs and Uses: The Foreign-Trade Zone Annual Report is the vehicle by which Foreign Trade Zone (FTZ) grantees report annually to the Foreign Trade Zones Board, pursuant to the requirements of the Foreign Trade Zones Act (19 U.S.C. 81a–81u). The annual reports submitted by grantees are the only complete source of compiled information on FTZ's. The data and information contained in the reports relates to international trade activity in FTZ's. The reports are used by the Congress and the Department to determine the economic effect of the FTZ program. The reports are also used by the FTZ Board and other trade policy officials to determine whether zone activity is consistent with U.S. international trade policy, and whether it is in the public interest. The public uses the information regarding activities carried on in FTZ's to evaluate their effect on industry sectors. The information contained in annual reports also helps zone grantees in their marketing efforts.

Affected Public: State, local, or tribal governments or not-for-profit institutions which are FTZ grantees.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Victoria Baecher-Wassmer, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice.

Dated: July 31, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–21009 Filed 8–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–810]

Chrome-Plated Lug Nuts From Taiwan; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Extension of time limit for preliminary results of antidumping duty administrative review of chrome-plated lug nuts from Taiwan.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the sixth antidumping duty administrative review of the antidumping order on chrome-plated lug nuts from Taiwan. This review covers 18 producers and exporters of chrome-plated lug nuts. The period of review is September 1, 1996 through August 31, 1997.

EFFECTIVE DATE: August 6, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, AD/CVD Enforcement Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 482–4195 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR 351.101, *et seq.* (62 FR 27269—May 19, 1997).

Extension of Preliminary Results

The Department initiated this administrative review on October 30, 1997 (62 FR 58705). Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On July 14, 1998, we received a request from the respondent to extend the deadline for the preliminary determination. Because of the complexity and novelty of certain issues in this case, it is not practicable to complete this review within the statutory time limit of 365 days. The Department, therefore, is extending the time limit for the preliminary results of the aforementioned review from August 3, 1998, to October 2, 1998. See memorandum from Maria Harris Tildon to Robert S. LaRussa, which is on file in Room B–099 at the Department's headquarters. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension of time limit is in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Dated: July 31, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II.

[FR Doc. 98–21065 Filed 8–5–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[(A–351–817)]

Certain Cut-to-length Carbon Steel Plate From Brazil; Antidumping Duty Administrative Review; Notice of Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On September 25, 1997, the Department of Commerce (''the Department'') published in the **Federal Register** (62 FR 50292) a notice announcing the initiation of an administrative review of the antidumping duty order on Certain Cut-to-Length Carbon Steel Plate (Carbon Steel Plate) from Brazil. This administrative review covered two Brazilian manufacturers and exporters of plate, Usinas Siderurgica de Minas Gerais (''USIMINAS'') and Companhia Siderurgica Paulista (''COSIPA''), for the period of August 1, 1996 through July 31, 1997. This review has now been rescinded as a result of the absence of shipments and entries into the United States of subject merchandise during the period of review.

EFFECTIVE DATE: August 6, 1998.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0405 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION: On August 29, 1997, Skadden, Arps, Slate, Meagher & Flom LLP, on behalf of petitioners in this proceeding, requested a review of sales made by USIMINAS and COSIPA. On September 10, 1997, USIMINAS and COSIPA claimed, in a letter to the Department, ''that they had no sales or entries of cut-to-length plate in the U.S. during the 1996/97 review period.'' The Department sent a no-shipment inquiry regarding USIMINAS and COSIPA to U.S. Customs on October 16, 1997. Customs did not indicate that there were any such entries. In a letter to the Department dated January 7, 1998, petitioners asked the Department to investigate the accuracy of respondents' claim. U.S. Census Bureau import statistics and privately collected data indicated there may have been entries of subject merchandise during the period of review. On January 20 and 29, 1998, Willkie Farr & Gallagher, counsel for USIMINAS and COSIPA, provided documentation to support its claim that the merchandise in question was either not entered for consumption in the United States (i.e., was transshipped to third countries) or was outside the scope of the antidumping duty order. On February 11, 1998, counsel for petitioners argued that the documentation provided was incomplete and inconclusive. Accordingly, the Department asked the U.S. Customs Service (''Customs'') to conduct an inquiry to determine whether certain entries for consumption in the United States were properly classified as falling under the scope of the antidumping duty order. Customs conveyed the results of this inquiry to the Department on July 24, 1998, stating that all of the entries in question were of non-scope merchandise. The Department therefore concludes that USIMINAS and COSIPA made no shipments of the subject merchandise during the period of review. Accordingly, this administrative review is being rescinded in accordance with Section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 351.213(d)(3) of the Department's regulations.

Dated: July 28, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 98–21062 Filed 8–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Porcelain-on-Steel Cookware From Mexico: Notice of Extension of Time Limit for Antidumping Duty Administrative Review

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

EFFECTIVE DATE: August 6, 1998.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929, or David J. Goldberger at (202) 482–4136, Office 5, AD/CVD Enforcement Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the eleventh administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico for the period December 1, 1996, through November 30, 1997. This extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, ''the Act'').

POSTPONEMENT: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines it is not practicable to complete the review within the statutory time limit of 365 days. The Department finds that it is not practicable to complete the eleventh administrative review of certain porcelain-on-steel cookware from Mexico within this time limit due to a number of complex issues, including reimbursement, and resource constraints.

In accordance with section 751(a)(3)(A) of the Act, the Department will extend the time for completion for the preliminary results of this review from a 245-day period to a period no longer than 365 days. Therefore, the final results are now due by December 31, 1998.

Dated: July 28, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–21063 Filed 8–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Preliminary Results of the Antidumping Duty Administrative Review.

SUMMARY: In response to requests by American Silicon Technologies, Elkem Metals Company, Globe Metallurgical, Inc. and SKW Metals & Alloys, Inc. (petitioners) and Companhia Brasileira Carbureto De Calcio (CBCC), Eletrosilex Belo Horizonte (Eletrosilex), Ligas de Aluminio S.A. (LIASA), Companhia Ferroligas Minas Gerais-Minasligas (Minasligas) and RIMA Industrial S/A (RIMA) (respondents), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on silicon metal from Brazil. The period of review (POR) is July 1, 1996 through June 30, 1997.

We preliminarily determine that only Eletrosilex sold subject merchandise at less than normal value (NV) during the POR. If the preliminary results are adopted in the final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) and the NV.

We invite interested parties to comment on the preliminary results. Parties who submit comments in this proceeding should also submit with the argument: (1) A statement of the issue(s); and (2) a brief summary of the argument (not to exceed five pages).

EFFECTIVE DATE: August 6, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Bolling, Abdelali Elouaradia, Letitia Kress, Lisette Lach or Sinem Sonmez, Office of Antidumping/Countervailing Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to 19 CFR part 351 (62 FR 27296 (May 19, 1997)).

Background

On July 31, 1991, the Department published in the **Federal Register** the antidumping duty order on silicon metal from Brazil (56 FR 36135). On July 21, 1997, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on silicon metal from Brazil for the period July 1, 1996 through June 30, 1997 (62 FR 38973). On July 29, 1997, in accordance with 19 CFR 351.213(b)(1), CBCC, Minasligas, Eletrosilex, and RIMA requested that the Department conduct an administrative review of their respective sales. On July 31, 1997, LIASA requested that the Department conduct an administrative review of its sales. On July 31, 1997, petitioners also requested that the Department conduct an administrative review on sales made by CBCC, Eletrosilex, Minasligas and RIMA. On September 22, 1997, the Department issued the antidumping administrative review questionnaire to all respondents. On September 25, 1997, in accordance with 19 CFR 351.221(b)(1) of the Department's regulations, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review (62 FR 50292). The Department is conducting this review in accordance with section 751 of the Act.

On March 24, April 24, and July 2, 1998, we issued supplemental questionnaires to CBCC. We received responses from CBCC on April 15, April 30, and July 14, 1998, respectively. On March 20, April 30, April 22, and July 13, 1998, we issued supplemental questionnaires to LIASA. We received responses from LIASA, on April 3, April 27, April 30, and July 20, 1998, respectively. On March 30, and July 2, 1998, we issued supplemental questionnaires to Minasligas. We received responses from Minasligas, on April 14, and July 9, 1998, respectively. On March 31, June 29, and July 2, 1998, we issued supplemental questionnaires to RIMA. We received responses from RIMA, on April 17, July 9, and July 13, 1998, respectively. On March 24, June 29, and July 6, 1998, we issued supplemental questionnaires to Eletrosilex. We received a response from Eletrosilex on April 10, 1998. However, Eletrosilex did not respond to the

Department's final two supplemental questionnaires. *See* Use of Facts Available section below.

On March 27, 1998, in accordance with section 751(a)(3)(A) of the Act, the Department published in the **Federal Register** its notice extending the deadline in the preliminary results until July 30, 1998 (63 FR 14900).

Scope of Review

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. Although the HTS item numbers are provided for convenience and for U.S. Customs purposes, the written description remains dispositive.

Period of Review

The POR is July 1, 1996 through June 30, 1997.

Verification

As provided in section 782(i) of the Act, we verified LIASA's sales and cost information from May 4, 1998 through May 9, 1998, and CBCC's sales and cost information from May 11, 1998 through May 16, 1998. At each verification, we used standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original source documentation containing relevant information. Our verification results are outlined in the public version of the respective verification reports, available to the public in Room B–099 of the U.S. Department of Commerce.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the ''Scope of the Review'' section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical or similar merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the constructed value (CV) of the product sold in the U.S. market during the comparison period.

On January 8, 1998, the U.S. Court of Appeals for the Federal Circuit issued a decision in *Cemex S.A.* v. *United States*, 133 F. 3d 897 (Fed. Cir. 1998). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds foreign market sales to be outside ''the ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the information provided by each respondent in response to our antidumping questionnaire. We have implemented the Court's decision in this case to the extent that the data on the record permitted.

Fair Value Comparisons

To determine whether sales of silicon metal by the Brazilian respondents to the United States were made at less than fair value, we compared EP to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

For CBCC, Eletrosilex, LIASA, Minasligas and RIMA, we used the Department's export price (EP) methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer outside the United States directly to the first unaffiliated purchaser in the United States prior to importation.

We made company-specific adjustments to EP as follows:

CBCC

In accordance with section 772(c) of the Act, we calculated EP based on packed, delivered prices to the first unaffiliated purchasers in the United States or to unaffiliated trading companies who sell the subject merchandise in the United States. We made deductions from the starting price (gross unit price), where appropriate, for foreign inland freight, brokerage and handling, international freight.

Eletrosilex

In accordance with section 772(c) of the Act, we calculated EP based on packed, delivered prices to the first unaffiliated customer in the United States or to unaffiliated trading companies who sell the subject merchandise in the United States. We made deductions from the starting price (gross unit price), where appropriate, for foreign inland freight, brokerage and handling, and international freight, and added duty drawback.

LIASA

In accordance with section 772(c) of the Act, we calculated EP based on packed, delivered prices to the first unaffiliated customer in the United States or to unaffiliated trading companies who sell the subject merchandise in the United States. We made deductions from the starting price (gross unit price), where appropriate, for foreign movement expenses. Upon our findings at verification, we modified the value for inland freight and packing, as appropriate. *See* LIASA's Verification Report dated July 30, 1998 and Memorandum dated July 30, 1998.

On May 1, 1998, petitioners requested in their pre-verification comments that the Department closely examine a particular sale in the LIASA U.S. sales database during its verification of

LIASA data. Petitioners stated that it appeared that this particular sale was not representative of a normal commercial transaction due to its aberrant sale price, quantity, and unusual mode of transportation. Thus, petitioners requested that the Department use its authority to exclude from the margin calculation this U.S. sale as it is distortive, atypical and unrepresentative of an arm's-length transaction.

At verification, the Department examined the sale in question. *See* LIASA Verification Report dated July 29, 1998. The evidence on the record indicates that this sale is a testing/trial run sale. *See* LIASA's Verification Exhibit 4 and verification report at pages 6–9. Because consideration was paid for the merchandise, we preliminarily determine in accordance with the Department's practice regarding samples to include this sale in our calculations. *See Antifriction Other than Tapered Roller Bearings from France; Final Results of Antidumping Duty Administrative Review*, 62 FR 2081, 2122 (January 15, 1997). Further, we preliminarily do not find that it is distortive or unrepresentative and should therefore be excluded.

Minasligas

In accordance with section 772(c) of the Act, we calculated EP based on packed, delivered prices to the first unaffiliated customer in the United States or to unaffiliated trading companies who sell the subject merchandise in the United States. We made adjustments from the starting price (FOB unit price), where appropriate, for foreign movement expense (comprising weighing, sampling and analysis, and port clerical expenses), inland freight, brokerage and handling, and duty drawback. We used the FOB unit price (a gross unit price in dollars) since Minasligas negotiated its U.S. sales in U.S. dollars. We also made modifications to the payment date. We used the date of payment by the U.S. customer to Minasligas for each sale rather than the date of payment by the bank to Minasligas. The date of payment information was provided to the Department in Minasligas's April 13, 1998 submission. In addition, we recalculated the interest rate to be used in Minasligas's U.S. credit expense calculation. For our calculation of the interest rate for U.S. sales, we relied on the Advance Exchange Contract (''ACC'') information presented in the company's April 13, 1998 submission.

Because Minasligas does not know the entry dates of its U.S. sales, it reported all shipments made during the POR, which included two shipments that were reported in the fifth administrative review. We have excluded the two U.S. sales that were reported in the fifth administrative review from our calculation as we have calculated a margin on these sales in the last review.

RIMA

In accordance with section 772(c) of the Act, we calculated EP based on packed, delivered prices to the first unaffiliated customer in the United States or to unaffiliated trading companies who sell the subject merchandise in the United States. We made deductions from the starting price (gross unit price), where appropriate, for domestic inland freight, brokerage and handling, and ocean freight.

Normal Value

A. Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Since each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its respective aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV for each respondent. Therefore, pursuant to section 773(a)(1)(B) of the Act, we based NV on home market sales.

B. Home Market Sales

We based NV on the price at which the foreign like product was first sold for consumption in Brazil, in the usual commercial quantities, in the ordinary course of trade in accordance with section 773(a)(1)(B)(i) of the Act. To the extent practicable, we based NV on sales at the same level of trade as the EP sales. For level of trade, please see the level of trade section below.

We made company-specific adjustments to the NV prices as follows:

CBCC

We based home market prices on the packed, delivered prices to affiliated and unaffiliated purchasers in the home market. Where appropriate, we used CV as the basis of NV. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments to home market price for inland freight. To adjust for differences in circumstances of sale between the home market and the United States, we adjusted home market prices by deducting HM credit expenses and adding HM interest revenue and adding U.S. credit expenses (offset by interest revenue), U.S. post-sale warehousing, and U.S. direct selling expenses. In order to adjust for differences in packing between the two markets, we adjusted home market price by deducting HM packing costs and adding U.S. packing costs. Home market prices were reported inclusive of value-added taxes (VAT) and, therefore, a deduction for VAT was necessary.

Because CBCC paid commissions on home market sales, in calculating NV for this respondent, we added the lesser of either: (1) the weighted-average amount of commissions paid on the home market sales; or (2) the amount of indirect selling expenses paid on the U.S. sale. *See* 351.410(e) of the Department's regulations.

Eletrosilex

We based home market prices on the packed, delivered prices to affiliated and unaffiliated purchasers in the home market. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments to home market price for inland freight. To adjust for differences in circumstances of sale between the home market and the United States, we adjusted home market prices by deducting HM credit expense and other HM direct selling expenses and adding U.S. directs selling expenses, including U.S. credit expenses. In order to adjust for differences in packing between the two markets, we deducted HM packing costs and added U.S. packing costs. Home market prices were reported exclusive of VAT and, therefore, no deduction was necessary.

Although Eletrosilex provided the Department with credit expenses based on Reais and U.S. dollar borrowings, the Department calculated home market credit expense based on Reais denominated loans.

LIASA

We based home market prices on the packed, delivered prices to affiliated and unaffiliated purchasers in the home market. Where appropriate, we used CV as the basis of NV. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments for movement expenses. To

adjust for differences in circumstances of sale between the home market and the United States, we reduced home market prices by the amounts for direct selling expenses including credit and commission expenses and added U.S. credit expenses. In order to adjust for differences in packing between the two markets, we deducted HM packing costs and added U.S. packing costs. Home market prices were reported inclusive of VAT and, therefore, a deduction for VAT was necessary.

Minasligas

We based home market prices on the packed, delivered prices to affiliated and unaffiliated purchasers in the home market. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments for movement expenses. To adjust for differences in circumstances of sale between the home market and the United States, we reduced home market prices by an amount for home market credit expenses and added U.S. credit expenses. In order to adjust for differences in packing between the two markets, we adjusted home market price by deducting HM packing costs and adding U.S. packing costs. Home market prices were reported inclusive of VAT and, therefore, a deduction for VAT was necessary.

RIMA

We based home market prices on the packed, delivered prices to affiliated or unaffiliated purchasers in the home market. Where appropriate, we used CV as the basis of NV. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments for inland freight. To adjust for differences in circumstances of sale between the home market and the United States, we adjusted home market prices by deducting HM credit expenses and commissions and adding HM interest revenue and adding U.S. credit expenses. In order to adjust for differences in packing between the two markets, we adjusted home market price by deducting HM packing costs and adding U.S. packing costs. Home market prices were reported inclusive of VAT and, therefore, a deduction for VAT was necessary.

Because Rima paid commissions on home market sales, in calculating NV for this respondent, we added the lesser of either: (1) the weighted-average amount of commissions paid on the home market sales; or (2) the amount of indirect selling expenses paid on the U.S. sale. *See* 351.410(e) of the Department's regulations.

C. ICMS Tax

In general, most foreign governments that establish value-added taxes (''VAT'') allow for a credit for VAT paid on inputs that can be used to offset tax liability to the government arising from home market sales (*i.e.*, VAT collected from domestic customers). In addition, most foreign governments allow for a rebate or remittance of the tax paid on material inputs upon the exportation of the finished product, provided companies submit documentation that such inputs are used in the products for exportation.

Under Brazil's VAT system, however, there is no provision for refunding the taxes based upon export sales. Rather, in Brazil's system only a tax credit arises upon the purchase of inputs for use in the finished product. That credit can be used to offset tax liability to the government arising from sales in the domestic market (*i.e.*, ICMS taxes collected from home market customers) to the extent that a company makes such sales in the home market.

In the past, the Department included ICMS taxes in the calculation of CV because such taxes are considered a cost of production. However, recent decisions by the Court of International Trade (CIT) on this issue have accorded substantial weight to the ''economic reality'' of the Brazilian tax system which in some circumstances allows for recovery of the ICMS tax paid on material inputs used in the production of export sales. *See Aimcor* v. *United States*, 19 CIT 966 (CIT 1995); *Camargo Correa Metais, S.A.* v. *United States*, 17 CIT 897, 911 (CIT 1993). In light of these decisions, the Department is reconsidering its current policy of including ICMS tax in CV.

We will now no longer assume that VAT taxes are a cost when calculating CV. Instead, we will examine the actual experience of each producer/exporter subject to an investigation or review. If any exporter/producer is able to demonstrate that it was able to offset its tax liability on domestic sales, no addition for such taxes should be made in calculating CV for that producer/exporter. Similarly, if any producer/exporter is able to use only a portion of the credits generated by export sales we will treat as a cost in calculating CV only that portion which was not used during the period. Only if a producer/exporter is unable to use any of the tax credits, or if the producer/exporter fails to provide satisfactory evidence of its tax experience on this question, will we continue to treat the entire amount of VAT taxes as a direct cost in calculating CV. The Department invites comment from interested parties with respect to this issue.

Additionally, CBCC, LIASA, and Minasligas have noted that Brazil's new ICMS tax law allows companies to use ICMS tax credits generated during the POR for the reduction in payment of electricity costs. These companies have requested that the Department reduce their ICMS tax paid during the POR by the amount of tax credits used for electricity after the POR, because such credits were generated during the POR. We preliminarily determine that, since the companies used these tax credits after the POR, that would be the appropriate time to account for this reduction in these companies' ICMS tax credit balance.

Price to Price Comparisons

Where there were contemporaneous sales of the comparison product that passed the COP test, we based NV on home market prices.

Price to CV Comparisons

When we based NV on CV, we calculated CV in the manner described below. See ''Cost of Production (COP) Analysis'' section. Where we compared export prices to CV, we deducted from CV the weighted-average home market direct selling expenses and added the U.S. direct selling expenses, where applicable, in accordance with sections 773(a)(8) and 773(a)(6)(C)(iii) of the Act.

Cost of Production (COP) Analysis

On February 11, 1998, the Department published in the **Federal Register** the final results of the fifth administrative review on silicon metal from Brazil. *See Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil*, 63 FR 6899. In that review, in accordance with section 773(b)(1) of the Act, the Department disregarded home market sales found to be below COP for CBCC, Eletrosilex, Minasligas and RIMA. Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated an investigation to determine whether these respondents made home market sales during the POR at prices below their COP. In addition, on March 16, 1998, we initiated a below-cost investigation for LIASA pursuant to petitioners' allegation on

December 12, 1997. *See* 1996–1997 Administrative Review of the Antidumping Duty Order on Silicon Metal from Brazil: Analysis of Petitioners' Allegation of Sales Below the Cost of Production (''COP'') for Ligas de Aluminio S.A.

A. Calculation of COP

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of each respondent's cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market general and administrative expenses and packing costs. We relied on the home market sales and COP information that each respondent provided in its questionnaire responses. We adjusted each respondent's reported COP as follows:

CBCC

As a result of verification findings, we recalculated depreciation based on the Departmental methodology. *See* CBCC's 1996–1997 Verification Report dated July 30, 1998, and Analysis Memorandum on the Sixth Administrative Review of Silicon Metal from Brazil from Lisette Lach through James Doyle to the File dated July 30, 1998 (''Memorandum''), a public version of which is in the file in Central Records, Room B–099 at the U.S. Department of Commerce.

We recalculated CBCC's G&A expenses using CBCC's and Solvay & Cie's 1996 G&A expenses and COGS as reported in Exhibit 3 of CBCC's November 21, 1997 submission, because it is Departmental practice to calculate G&A expenses on an annual basis as a ratio of total G&A expenses divided by cost of goods sold (COGS). *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Notice of Final Antidumping Duty Administrative Reviews,* 62 FR 18448, 18456 (April 15, 1997). To obtain the amount of unit G&A expense for the POR, we multiplied the G&A expense ratio for CBCC and Solvay & Cie by the unit COM of the merchandise under investigation. *See* CBCC's Memorandum and Attachment to that Memorandum.

Additionally, the Department recalculated CBCC's cost of manufacture because CBCC did not provide its COP for self-produced charcoal. Instead, CBCC only provided costs based on its purchases of charcoal from an unaffiliated supplier(s). Therefore, we had to apply facts available in accordance with section 776(a) of the Act for the cost of self-produced charcoal. As facts available, we used as the cost for CBCC's self-produced charcoal the prices that CBCC paid to unaffiliated supplier(s) for purchased charcoal. Therefore, we have recalculated the cost of CBCC's charcoal production by using the annual average cost CBCC was charged by unaffiliated supplier(s). *See* CBCC's Verification Report dated July 30, 1998 and Memorandum dated July 30, 1998.

The Department's established policy is to calculate interest expenses (INTEX) incurred on behalf of the consolidated group of companies (*e.g.,* Solvay & Cie) to which the respondent belongs, based on consolidated financial statements. This practice recognizes two facts: (1) The fungible nature of invested capital resources such debt and equity of the controlling entity within a consolidated group of companies, and (2) the controlling entity within a consolidated group has the power to determine the capital structure of each member country within its group. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review Aramid Fiber Formed of Poly ParaPhneylene Terephthalamide from the Netherlands,* 62 FR 38058 (July 16, 1997). Accordingly, we recalculated INTEX by multiplying the reported the percentage of Solvay & Cie's financial expenses by cost of manufacture (COM). *See* CBCC's Memorandum and Attachment to Memorandum.

Eletrosilex

As a result of our determination to recalculate interest expense based on the facts available (*see* facts available section), we have recalculated Eletrosilex's general and administrative expenses on the same basis as interest expense in order to be consistent with the interest expense calculation. See Analysis Memorandum on the Sixth Administrative Review of Silicon Metal from Brazil from Letitia Kress through James Doyle to the File dated July 30, 1998 (''Memorandum''), a public version of which is in the file in Central Records, Room B–099 at the U.S. Department of Commerce.

LIASA

As a result of verification, the Department recalculated LIASA's total cost of manufacture because at we found that certain sales of slag were incorrectly classified as off-grade silicon metal. *See* LIASA's Verification Report dated July 30, 1998 and LIASA's Analysis Memorandum dated July 30, 1998.

Minasligas

We recalculated Minasligas's G&A expenses, using Minasligas's and Delp Engenharia Mecanica S.A. (Delp) 1996 G&A expenses and COGS as reported in Minasligas's November 21, 1997 submission. We recalculated G&A because it is Departmental practice to include both the parent (Delp) and subsidiary company (Minasligas) G&A expenses in its calculation of total G&A. *See* Minasligas's Analysis Memorandum.

RIMA

The Department adjusted RIMA's G&A and interest expense calculations. In our original questionnaire of September 22, 1997, and supplemental questionnaire of March 31, 1998, we requested RIMA to compute its G&A expenses on an annual basis as a ratio of its total G&A expenses divided by its cost of goods sold. In both instances, RIMA did not calculate its G&A expenses using the methodology requested by the Department. Therefore, we have recalculated RIMA's G&A based on its 1996 and 1997 financial statements, and Departmental practice of calculating G&A on total G&A expenses divided by cost of sales. *See* Analysis Memorandum on the Sixth Administrative Review of Silicon Metal from Brazil from Abdelali Elouaradia through James Doyle to the File dated July 30, 1998 (''Memorandum''), a public version of which is in the file in Central Records, Room B–099 at the U.S. Department of Commerce.

Additionally, the Department has recalculated RIMA's interest expense. In our supplemental questionnaire of June 29, 1998, we requested RIMA to provide a breakout for 1996 and 1997 of their Income of Financial Investment by the type of investment. In its July 8, 1998 supplemental response, RIMA stated that it did not have financial investments during this period. However, in its April 17, 1998 supplemental response, RIMA applied certain accounts (*i.e.,* Currency Adjustment, Asset Discounts, and Asset Interest) to offset its financial expenses in its calculation of interest expense. Although requested, RIMA has not provided the Department with an explanation why these accounts were included as offsets to its interest expense. Therefore, the Department has recalculated RIMA's interest expense based on RIMA's 1996 and 1997 financial statements without the offsets claimed by RIMA. *See* Analysis Memorandum on the of the Sixth Administrative Review of Silicon Metal from Brazil from Abdelali Elouaradia through James Doyle to the File dated July 30, 1998 (''Memorandum''), a public version of which is in the file in

Central Records, Room B–099 at the U.S. Department of Commerce.

B. Test of Home Market Prices

After calculating COP, we tested whether home market sales of silicon metal were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges and discounts, where appropriate.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of each respondent's home market sales for a model were at prices less than the COP, we did not disregard any below-cost sales of that model because we determined that the below cost sales were not made within an extended period of time in ''substantial quantities.'' Where 20 percent or more of each respondent's home market sales of a given product during the POR were at prices less than the COP, we determined that such sales were made within an extended period of time in substantial quantities in accordance with section 773(b)(2) (C) of the Tariff Act. To determine whether such sales were at prices which would not permit the full recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act, we compared home market prices to the weighted-average COP for the POR. When we found that below-cost sales had been made in ''substantial quantities'' and were not at prices which would permit recovery of all costs within a reasonable period of time, we disregarded these below-cost sales in the preliminary results in accordance with section 773(b)(1) of the Act.

In these preliminary results, our cost tests for CBCC, Minasligas, and Rima indicated that less than twenty percent of the sales of subject merchandise were at prices below COP. We therefore retained all sales of subject merchandise in our analysis and used them in our determination of NV, where applicable.

The results of our cost tests for Eletrosilex and LIASA indicated that, within an extended period of time (one year, in accordance with section 773(b)(2)(B) of the Act), more than twenty percent of the sales of all products of each company were at prices below COP. Thus these below-cost sales were in ''substantial quantities.'' In addition, these sales were at prices which would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Act, we disregarded the below-cost sales of subject merchandise for each of these two companies and used the remaining above-cost sales as the basis for determining each company's NV, where applicable.

For all respondents in accordance with section 773(a)(4) of the Act, we used CV as the basis for NV when there were no usable sales of the foreign like product in the comparison market. We calculated CV in accordance with section 773(e) of the Act.

Constructed Value

In accordance with section 773(e) of the Act, for CBCC, LIASA, and Rima, we calculated CV based on the sum of respondent's cost of materials and fabrication employed in producing the subject merchandise, selling, general and administrative expenses, and profit incurred and realized in connection with production and sale of the foreign like product, and U.S. packing costs. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We used the costs of materials, fabrication, and SG&A as reported in the CV portion of respondent's questionnaire response.

For Rima, we adjusted its general and administrative and interest expenses. *See* Analysis Memorandum on the Sixth Administrative Review of Silicon Metal from Brazil from Abdelali Elouaradia through James Doyle to the File dated July 30, 1998 (''Memorandum''), a public version of which is in the file in Central Records, Room B–099 at the U.S. Department of Commerce. Additionally, because Rima has recovered ICMS tax on material inputs used in the production of silicon metal for export, we have excluded such taxes in the calculation of constructed value. We used the U.S. packing costs as reported in the U.S. sales portion of respondent's questionnaire responses. We based selling expenses and profit on the information reported in the home market sales portion of respondent's questionnaire responses. *See Certain Pasta from Italy; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 61 FR 1344, 1349 (January 19, 1996). For selling expenses, we used the weighted-average home market selling expenses.

For CBCC, we made adjustments to fixed overhead to reflect the correct depreciation expense, G&A expenses and interest expense. These adjustments reflect those made in CBCC's COP. *See* adjustments to CBCC's COP in ''Calculation of COP'' section above. Because CBCC did not recover ICMS tax on material inputs used in the production of silicon metal for export to the United States, we have included CBCC's ICMS tax in the calculation of constructed value. To the extent CBCC recovered ICMS taxes for sales in the home market during the POR, we have excluded such tax from the calculation of CV.

For LIASA, because LIASA did not recover ICMS tax on material inputs used in the production of silicon metal for export to the United States we have included LIASA's ICMS tax in the calculation of constructed value. To the extent LIASA recovered ICMS taxes for sales in the home market during the POR, we have excluded such tax from the calculation of CV.

For Eletrosilex, we included the cost of materials and fabrication, and G&A expenses in CV. We made adjustments to depreciation expenses, amortization expenses, electricity cost, general and administrative expenses, and financial expenses. These adjustments reflect those made in Eletrosilex's COP. *See* adjustments to Eletrosilex's COP in ''Calculation of COP'' section above and Facts Available section below. In these preliminary results, since we found that Eletrosilex made no above-cost sales of the foreign like product in the comparison market, we were therefore unable to derive profit for use in the constructed value calculation using Eletrosilex's home market sales data. For this reason, in accordance with section 773(e)(2)(B)(ii) of the Act, we used the average of the actual amounts of selling expenses incurred, and profit realized, by CBCC, LIASA, Minasligas and Rima in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the home market. Additionally, we have included Eletrosilex's ICMS tax balance in the calculation of constructed value because Eletrosilex failed to provide the Department complete information on its ICMS tax balance. *See* Facts Available Section below and Analysis Memorandum. In accordance with section 773(2)(B)(i) of the Act, we based G&A expenses (including net interest expenses) on the amounts incurred by the respondent in connection with the production and sale, for consumption in the foreign country, of the same general category of products.

Use of Facts Available

Eletrosilex

We preliminarily determine that the use of adverse facts available is appropriate with respect to certain aspects of Eletrosilex's submitted data in accordance with section 776(a)(2)(C) and section 776(b) of the Act because we find that Eletrosilex failed to cooperate to the best of its ability in failing to comply with our requests for complete information. In two supplemental questionnaires issued by the Department, Eletrosilex failed to provide the requested information. *See Memorandum to Robert S. LaRussa from Joseph A. Spetrini, July 20, 1998 on file in the Central Records Unit, Room B–099 of the main Commerce Building.*

On June 29 and July 6, 1998, the Department issued supplemental questionnaires to Eletrosilex requesting additional information on its home market sales, U.S. sales, cost of production, constructed value, and ICMS taxes. *See* Departmental letters to Eletrosilex on those dates. Eletrosilex failed to respond to two supplemental questionnaires requesting clarification of specific sales and cost questions and the nature of Eletrosilex's ICMS taxes. We must therefore consider whether Eletrosilex's submitted response is usable under section 782(e) of the Act.

Section 782(e) provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet the applicable requirements established by the Department if: (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties.

When examined in light of the requirements of section 782(e), the facts of this review demonstrate that while Eletrosilex data is incomplete for certain elements of the calculation, nevertheless the Department has enough data on the record to reasonably calculate a dumping margin. On this basis, we determine that it is appropriate to resort to partial facts available, based on Departmental adjustments to Eletrosilex's cost of production data.

The Department finds that Eletrosilex did not act to the best of its ability to comply with requests for information. In the past, Eletrosilex has demonstrated an understanding for requests of additional information by the Department. In this review, Eletrosilex responded on April 10, 1998, to the Department's March 24, 1998 supplemental questionnaire. However, its failure to provide responses to our other supplemental questionnaires (i.e., dated June 29 and July 6, 1998) despite numerous opportunities to do so constitutes a failure to cooperate to the best of its ability with respect to our request for information. *See* Public Version of Memorandum to File from Robert Bolling, dated July 20, 1998. It is therefore appropriate, under section 776(b) of the Act, for the Department to use an adverse inference in applying facts available.

Accordingly, based on facts available, we have determined to recalculate Eletrosilex's depreciation expenses, amortization expenses, electricity cost, and financial expenses. *See* Analysis Memorandum dated July 30, 1998.

Level of Trade

In accordance with section 773(a)(7) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting price sales, which is usually from exporter to importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine the stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjusted NV under section 773(a)(7)(B) of the Act (the CEP Offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

To determine whether a LOT adjustment or CEP offset was warranted for all Brazilian respondents, we compared the EP sales to the HM sales in accordance with the principles discussed above. For purposes of our analysis, we examined information regarding the distribution systems in both the U.S. and Brazilian markets, including the selling functions, classes of customer, and selling expenses for each respondent.

In the home market, all respondents sold the subject merchandise to one or more of the following three categories of customers: end-users, and trading companies. Regardless of the category of customer, all respondents' home market sales were manufactured to order and the merchandise was shipped directly from the factory to each type of customer. Their packing processes were also identical for all sales, and the selling expenses for the POR were comparable for all sales, regardless of the category of customer. Evidence on the record also demonstrates that respondents did not have formal policies for providing special payment terms, such as discounts, to different types of customers. Additionally, we found no differences in the selling activities performed for each respondent's U.S. sales in comparison to its home market sales. Thus, we have determine that the selling activities each respondent performed for its home market sales were the same for all home market sales, and that each respondent's home market sales were all made at a single LOT.

All respondents reported only EP sales in the U.S. market. All U.S. sales were made to either U.S. end-users or traders, where each sale was manufactured to order, and the selling activities were comparable for all sales, regardless of the category of customer. Therefore, we have concluded that for each respondent a single LOT exists in the United States which is the same as the HM LOT. Therefore, no LOT adjustment is warranted in this review.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the

following weighted-average dumping margins exist for the period July 1, 1996 through June 30, 1997, to be as follows:

Manufacturer/exporter	Margin (percent)
CBCC	0
Eletrosilex	33.11
LIASA	0
Minasligas	0
RIMA	0

Parties to the proceeding may request disclosure within five (5) days of the date of publication of this notice. Any interested party may request a hearing within ten (30) days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit argument are requested to submit with the argument: (1) A statement of the issues and (2) a brief summary of the argument. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service. The Department calculated the assessment of duties in accordance with section 351.212 of its regulations.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1)(c) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate established in the final results of this review (except that no deposit will be required for firms with zero or *de minims* margins, *i.e.*, margins less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 91.06 percent, the all others rate established in the LTFV investigation, 56 FR 36135 (July 31, 1991).

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–21061 Filed 8–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–405–071]

Viscose Rayon Staple Fiber from Finland: Notice of Termination of Antidumping Duty Administrative Review

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

ACTION: Notice of Termination of Antidumping Duty Administrative Review.

SUMMARY: On April 24, 1998, the Department of Commerce (the Department) published in the **Federal Register** (63 FR 20378) a notice announcing the initiation of an administrative review of the antidumping duty order on viscose rayon staple fiber from Finland, covering the period March 1, 1997 through February 28, 1998, and one manufacturer/exporter of the subject merchandise, Säteri Oy. This review has now been terminated as a result of the interested party's withdrawal of its request for an administrative review.

EFFECTIVE DATE: August 6, 1998.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur, Office of AD/CVD Enforcement, Group II, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5346.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1998, Courtaulds Fibers Inc., a domestic interested party, requested an administrative review of the antidumping duty order on viscose rayon staple fiber from Finland in accordance with 19 CFR 351.1213(b). On April 24, 1998, in accordance with 19 CFR 351.221(c)(1)(ii), we initiated an administrative review of this order for the period March 1, 1997 through February 28, 1998. On July 20, 1998, Courtaulds Fibers Inc. withdrew its request for this review.

Termination of Review

Courtaulds Fibers withdrew its request within the time limit provided by the Department's regulations at 19 CFR 351.213(d)(1). Therefore, the Department is terminating this review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: July 31, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–21064 Filed 8–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Coastal Zone Management

Federal Consistency Appeal by Chevron U.S.A. Production Company by an Objection by the State of Florida Department of Community Affairs.

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal and Request for Comments.

Chevron U.S.A. Production Company (Appellant), filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq*., and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from an objection by the State of Florida (State) to the Appellant's consistency certification for a Development and Production Plan to produce up to 21 natural gas wells in the Destin Dome 56 Unit, some 15 miles from Florida waters and approximately 25 miles from Pensacola. The Appellant has certified that the project is consistent with the State's coastal management program.

The CZMA provides that a timely objection by a state precludes any federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either ''consistent with the objectives'' of the CZMA (Ground I) or ''necessary in the interest of national security'' (Ground II).

Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I and Ground II. To make the determination that the proposed activity is ''consistent with the objectives'' of the CZMA, the Secretary must find that: (1) the proposed activity furthers one or more of the national objectives or purposes contained in section 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is ''necessary in the interest of national security,'' the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121 and 930.122. In addition, the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce will hold a public hearing in this appeal. NOAA plans to hold this hearing around the same time as the hearing to be held by the Minerals Management Service (MMS) on the draft environmental impact statement that MMS is preparing on Chevron's project. NOAA will publish a **Federal Register** notice announcing the date and time for the public hearing when it has been scheduled. Public comments will be accepted from now until 30 days after the hearing. Comments should be sent to Ms. Mary O'Brien, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Copies of comments will also be forwarded to the Appellant and the State.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the State and the Office of the Assistant General Counsel for Ocean Services.

This notice was originally published on July 9, 1998, at 53 FR 37094. The notice has been revised to reflect the extension of the public comment period and also to clarify statements that appeared in the original notice.

FOR FURTHER INFORMATION CONTACT: Ms. Mary O'Brien, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, 301–713–2967.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: July 31, 1998.

Monica Medina,

General Counsel.

[FR Doc. 98–21082 Filed 8–5–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072398B]

Marine Mammals; File No. 782–1438

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070, has been issued an amendment to scientific research Permit No. 782–1438.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150);

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On June 16, 1998, notice was published in the **Federal Register** (63 FR 32864) that an amendment of Permit No. 782–1438, issued May 8, 1998 (63 FR 27265), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq*.), the provisions of § 216.39 of 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*.), the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq*.).

Permit No. 782–1438 authorizes the National Marine Mammal Laboratory to take various large and small cetacean species through aerial surveys and harass several pinnipeds incidentally to these surveys.

The amendment now authorizes the National Marine Mammal Laboratory to conduct delphinid and pinniped vessel surveys, and photo-identify and biopsy sample large cetaceans in order to estimate abundance, distribution, identify individuals, and determine stock structure.

Issuance of this amendment, 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 ESA.

Dated: July 31, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–21067 Filed 8–5–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072998B]

Marine Mammals; File Nos. 77#3–54 and 881–1443

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

ACTION: Receipt of applications for amendment.

SUMMARY: Notice is hereby given that the following Permit Holders have requested an amendment to their scientific research Permit:

Dr. Bradford E. Brown, Southeast Fisheries Science Center (File No. 77#3–54), 75 Virginia Beach Drive, Miami, FL 33149 (843/762–8541); and

Dr. Michael Castellini, Alaska Sealife Center (File No. 881–1443), Box 1329, Seward, AK 99664 (907/224–2600).

DATES: Written or telefaxed comments must be received on or before October 5, 1998.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

(77#3–54) - Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312); and

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250).

(881–1443) - Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written comments or requests for a public hearing on these requests should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular amendment requests would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendments to Permits No. 77#3–54 and 881–1443, issued on June 13, 1995 (60 FR 31214), and March 23, 1998 (63 FR 14905), respectively, are requested 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 (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

Permit No. 77#3–54 authorizes the permit holder to: take by harassment a maximum of 2,000 Atlantic bottlenose dolphins per year for the purpose of locating a maximum of 100 dolphins per year suitable for take by capture for examination, sampling, marking, tagging and release. Sampling procedures include venipuncture, marking by freeze-brand, tooth extraction, skin/blubber biopsy, diagnostic ultrasound, urine, fecal, microbiological, milk, and sperm sampling, colonic temperature measurements, acoustic recordings, and the application of cattle ear tags (roto-tags) and telemetry devices.

The permit holder requests an amendment to this permit to: (1) extend geographic coverage to include entire summer range of the depleted coastal migratory stock of bottlenose dolphins to include coasts of VA, MD, DE, NJ; (2) include satellite telemetry and different attachment packages for VHF transmitters and increase the number of animals that will be tagged annually to 60; and (3) include hoop-netting as an alternative capture method.

Permit No. 881–1443 authorizes the permit holder to: import from Canada, three juvenile Steller sea lions and two juvenile harbor seals, and to obtain six harbor seals domestically. The Holder conducts research on these animals that involve nutritional physiology, metabolic development, and clinical health under captive conditions.

The permit holder requests an amendment to this permit to: (1) collect whiskers or toenails from each animal for background concentrations of the stable isotopes of carbon and nitrogen; (2) ingest stable isotope carbon or nitrogen labeled fish orally or intravenously and blood sample collected following injection; (3) collect serial biopsies of blubber (50mg) to assess lipid profiles in Stellers and harbor seals; and (4) collection serial biopsies of muscle in harbor seals only for lipid profiles.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 30, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–21068 Filed 8–5–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; Notice of Postponement

ACTION: Notice is hereby given of the postponement of a meeting of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, created pursuant to Executive Order 13038.

REFERENCE: This notice amends the notice of open meeting published in the **Federal Register** on July 23, 1998. Citation: 63 FR 39557.

AUTHORITY: Executive Order 13038, signed by President Clinton on March 11, 1997.

NEW DATE: The meeting scheduled for Monday, August 10, 1998 has been

postponed to Wednesday, September 9, 1998.

ADDRESSES: The location of the September 9 meeting will be announced in a separate **Federal Register** notice. Updates about the location of the meeting will also be available on the Advisory Committee's website at www.ntia.doc.gov/pubintadvcom/pubint.htm or you may call Karen Edwards at 202–482–8056.

FOR FURTHER INFORMATION CONTACT: Karen Edwards, Designated Federal Officer and Telecommunications Policy Specialist, at the National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4720, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Telephone: 202–482–8056; Fax: 202–482–8058; E-mail: piac@ntia.doc.gov.

MEDIA INQUIRIES: Please contact NTIA's Office of Public Affairs at 202–482–7002.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 98–21125 Filed 8–5–98; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 980729197–8197–01]

National Medal of Technology Nomination Evaluation Committee (NMTNEC).

AGENCY: Technology Administration, U.S. Department of Commerce.

ACTION: Notice of recruitment for additional members for NMTNEC.

SUMMARY: The Department of Commerce, Technology Administration (TA), requests nominations of individuals for appointment to the National Medal of Technology Nomination Evaluation Committee (NMTNEC). The Committee provides advice to the Secretary on the implementation of Public Law 96–480 (15 U.S.C. 3711) under the Federal Advisory Committee Act, 5 U.S.C. app. 2. The terms of several current members have expired and the period of nominations will identify their replacement.

DATE: Please submit nominations before August 15, 1998 or within ten days of the publication of this notice.

ADDRESSES: Submit nominations to the National Medal of Technology Program Office, Technology Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 4226, Washington, D.C. 20230. Materials may be faxed to 202–501–8153.

FOR FURTHER INFORMATION CONTACT: Allison A. Rosenberg, Director, 202–482–5572.

SUPPLEMENTARY INFORMATION: The National Medal of Technology was rechartered on December 8, 1997, for a period of two years to provide advice to the Secretary on the implementation of Public Law 96–480 (15 U.S.C. 3711) under the Federal Advisory Committee Act, 5 U.S.C. app. 2. The National Medal of Technology Nomination Evaluation Committee (NMTNEC) serves as an advisory body to the Under Secretary of Technology in his capacity as Chair of the Steering Committee, which reports directly to the Secretary of Commerce. Members are responsible for reviewing nominations and making recommendations for the nation's highest honor for technological innovation, awarded annually by the President of the United States. Members of the NMTNEC have an understanding of, and experience in, developing and utilizing technological innovation and/or they are familiar with the education, training, employment and management of technological human resources.

Under the Federal Advisory Committee Act, membership in a committee constituted under the Act must be balanced. To achieve balance, the Department is seeking additional nominations of candidates from small, medium-sized, and large businesses from the following subsectors of the technology industry:

(1) Manufacturing and Process Quality Technologies;

(2) Infrastructure and Transportation Technologies, Structural Materials;

(3) Microelectronics, Functional Materials and Instrumentation; and

(4) Quality of Life Related Technologies.

Typically, committee members are present or former Chief Executive Officers or other senior leaders of corporations; presidents or distinguished faculty of universities; or senior executives of non-profit organizations. They offer stature by virtue of their positions and also possess first-hand knowledge of the forces driving future directions for their industries or fields of expertise. The Committee as a whole is balanced in representing geographical, professional, ethnic, and gender groups. Nominees must be U.S. citizens, must be able to fully participate in meetings pertaining to the review and selection of finalists for the National Medal of Technology, and must uphold the confidential nature of an independent peer review and competitive selection process.

Those wishing to nominate qualified parties should send a professional biographical fact sheet and a brief description of current corporate or organizational affiliation(s) that detail activity in the technology subsectors listed above.

The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse NMTNEC membership.

Gary R. Bachula,

Under Secretary (Acting), Technology Administration.

[FR Doc. 98–20999 Filed 8–5–98; 8:45 am]

BILLING CODE 3510–18–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Final Environmental Impact Statement for Pilot Testing of Neutralization/Biotreatment of Mustard Agent at Aberdeen Proving Ground, Maryland

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: This announces the availability of the Final Environmental Impact Statement (FEIS) which assesses the potential environmental impacts of the design, construction, systemization and operation of a facility to pilot test the neutralization/biotreatment process of mustard agent using water at Aberdeen Proving Ground (APG), Maryland. The proposed facility will be used to demonstrate, as part of a research and development program, the feasibility of adopting the neutralization process using water, followed by biotreatment, to destroy mustard agent currently stored in ton containers at APG.

DATES: Written comments received within 30 days of the publication of the Environmental Protection Agency's Notice of Availability for this action will be considered by the Army during final decision making.

ADDRESSES: To obtain a copy of the FEIS, write to Ms. Nancy Hoffman, Edgewood Community Outreach Office, Woodbridge Station, 1011 Woodbridge Center Way, Edgewood, Maryland 21040.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Herlinger, Office of the Program Manager for Chemical Demilitarization, ATTN: SFAE–CD–P Building E4585, Aberdeen Proving Ground, Maryland, 21010–5401;

telephone: (800) 488–0648 or (410) 463–2583; e-mail: cherling@cdra.apgea.army.mil.

SUPPLEMENTARY INFORMATION: The alternatives considered in this DEIS are no action (i.e., continued storage of mustard agent at APG) and locating the pilot facility at one of two potential sites within APG. Although the no action alternative is not viable under Pub. L. 99–145, the Department of Defense Authorization Act of 1986, it was analyzed to provide a comparison with the proposed action. In addition, the no action alternative is considered to be deferral of research and development of the neutralization process as an alternative technology.

The FEIS concludes that mustard agent stored in bulk containers can be pilot tested at APG in a safe and environmental acceptable manner using the water neutralization (hydrolis) process, followed by biotreatment. At one time, the option of sending the hydrolysate to an off-site biotreatment facility was considered by the Army. However, the Army has been unable to identify a suitable off-site biotreatment facility that would accept the neutralization hydrolysate and also conform to the safety and environmental protection requirements of the proposed action. Accordingly, off-site biotreatment is not addressed further in this EIS.

The Department of the Army prepared a Draft EIS (DEIS) which assessed the potential site-specific health and environmental impacts of the construction, systemization and operation of an on-site facility to pilot test the neutralization/biotreatment process of mustard agent using water at APG, Maryland. A Notice of Availability was published on March 27, 1998 (63 FR 14922), which provided notice that the Draft EIS was available for comment. Comments from the DEIS have been considered and responses are included in this Final EIS. After a 30-day waiting period the Army will publish a Record of Decision.

Dated: July 29, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 98–20971 Filed 8–5–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Notice of Availability; Draft DOE Order and Manual on Radioactive Waste Management

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of a revised draft DOE Order and Manual on radioactive waste management. These draft documents set forth the requirements that DOE programs and contractors would follow in managing DOE radioactive waste to provide for radiological protection from DOE facilities, operations, and activities in accordance with the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) and other authorities. As part of its mission, DOE generates, stores, treats, and disposes of high-level waste, transuranic waste, low-level waste, and mixed low-level radioactive waste.

DATES: Any comments on the draft Order or Manual (designated draft DOE O 435.1, Radioactive Waste Management, and draft DOE M 435.1, Radioactive Waste Management Manual, respectively) must be received by September 8, 1998 to ensure consideration. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Any written comments should be directed to: Martin Letourneau, Office of Waste Management, EM–35, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

Persons wanting to provide oral comments should call 1–800–356–7954. Electronic copies of the draft Order and Manual are available on the Internet at: <http://www.explorer.doe.gov:1776/htmls/draft.html> under the title ''Series 400 Work Process.'' Paper copies also may be obtained from the Center for Environmental Management Information, 955 L'Enfant Plaza, North, SW, Suite 8200, Washington, DC, 20024, 1–800–736–3282, in DC 202–863–5084; and DOE Reading Rooms. For locations of the DOE Reading Rooms or other public information repositories containing these documents, please contact the Center for Environmental Management Information at the above address and telephone.

FOR FURTHER INFORMATION CONTACT: For information on draft DOE O 435.1, Radioactive Waste Management, and draft DOE M 435.1, Radioactive Waste Management Manual, or the Order revision process, please contact: Martin Letourneau, at the above address, by telephone at 301–903–7656, or by e-mail at: martin.letourneau@em.doe.gov.

For general information on the DOE Directives System process, please contact: Howard Landon, United States Department of Energy, Office of Human Resources and Administration, 1000 Independence Ave., SW, Washington, DC 20585–0701, or call 202–586–4716.

SUPPLEMENTARY INFORMATION: The draft Order and Manual on radioactive waste management would revise the existing DOE Order on radioactive waste management, DOE 5820.2A. DOE is revising the existing DOE Order to reflect advances in radioactive waste management practices, and changes within DOE since the existing DOE Order was issued in 1988.

The draft Order and Manual would revise the procedural and managerial requirements for the management of radioactive waste in the existing DOE Order. The scope of the draft Order and Manual include:

(1) High-level waste management, including closure of high-level waste tank systems and management of associated incidental wastes;

(2) Transuranic waste management, including safe treatment, storage, and characterization/certification to support disposal at the Waste Isolation Pilot Plant;

(3) Low-level waste management, with attention to disposal and assessment of potential long-term impacts of the disposal on projected public dose; and

(4) The management of the radioactive component of mixed wastes to comply with external regulatory requirements, including the Resource Conservation and Recovery Act, which regulates the management of the hazardous component of mixed wastes.

DOE is also preparing an Implementation Guide, which will accompany the final Order and Manual.

The current radioactive waste management Order, DOE 5820.2A, provides that low-level and mixed low-level waste shall be disposed of at a DOE facility, but authorizes the granting of exemptions to allow disposal at a non-DOE facility when such disposal meets certain criteria. DOE is currently conducting a policy analysis of the use of non-DOE facilities for the disposal of DOE's low-level and mixed low-level waste to determine, among other things, whether this practice should be expanded or further restricted. DOE issued a notice of intent and request for public comment regarding this policy analysis on March 19, 1998 (63 FR 13396). Pending completion of that analysis, the section of the draft Manual

pertaining to the use of non-DOE facilities for disposal of low-level and mixed low-level waste is reserved.

Background

Under the Atomic Energy Act, DOE is responsible for research, development, and defense production involving nuclear materials, and for managing nuclear materials in a manner that protects the public health and safety. DOE employs service contractors to carry out these responsibilities at various sites in the United States. DOE has broad authority under the Atomic Energy Act to establish policies to carry out its responsibilities and to standardize its approach to using service contractors (42 U.S.C. § 2201). Issuance of a final version of today's draft Order and Manual will be an exercise of that authority.

Orders and Manuals are part of the DOE Directives System. The Directives System is the means by which DOE policies, requirements, and responsibilities are developed and communicated throughout DOE. Orders establish management objectives and requirements, and assign responsibilities. Compliance with Orders is mandatory for contractors to the extent specified in their contract. Manuals, also part of the DOE Directives System, establish requirements that supplement DOE Orders and provide more instruction about how the provisions of the Orders shall be carried out.

It is DOE's policy to use a consistent management system for the development, communication, implementation, and periodic review of its Orders. Most DOE Orders are scheduled for review every two years to determine whether they should be continued, revised, or canceled. Objectives to be achieved when revising a DOE Order include providing more effective program direction, accountability, and performance assurance.

As early as 1990, DOE began analyzing, assessing, and reviewing the existing Order on radioactive waste management, DOE 5820.2A, which was issued in September 1988. In 1991, DOE initiated efforts to revise DOE 5820.2A. During this initial revision effort, the Defense Nuclear Facilities Safety Board (DNFSB), an independent organization with oversight of DOE, began to examine low-level waste management at DOE's defense nuclear facilities in terms of DOE's past, present, and future operations. In September 1994, the DNFSB issued its Recommendation 94–2, Conformance with Safety Standards at DOE Low-Level Nuclear Waste and Disposal Sites, which found that:

- DOE had not kept pace with the evolution of commercial practices for waste disposal;
- Six years after DOE 5820.2A was issued, the performance assessment process prescribed by the Order had not been completed for any of DOE's low-level waste disposal facilities;
- The performance assessments excluded waste buried prior to September 1988; and
- There was considerable uncertainty in DOE's projections of future low-level waste volumes.

In May 1995, a draft revision to DOE 5820.2A (draft DOE 5820.2B) was reviewed by DOE and the DNFSB staff. Based on the DNFSB's comments and other comments resulting from the internal DOE review, DOE's Office of Environmental Management committed in 1996 to a new approach for revising the existing Order. This new approach involves a five-step process. First, DOE used a systems engineering approach to identify all functions and activities necessary for managing DOE radioactive waste. Second, the hazards that would be posed by performing these functions and activities were assessed, and actions that would mitigate the hazards were identified. Third, existing requirements (e.g., other DOE directives, Nuclear Regulatory Commission regulations, and Environmental Protection Agency standards) were reviewed and assessed to determine if existing requirements adequately addressed the identified hazards. Fourth, DOE developed proposed revisions to the procedural and managerial aspects of its requirements to address the identified hazards consistent with existing directives or regulations, and the technical basis for each requirement was documented. Finally, DOE is making the draft Order and Manual available today for public review. Following consideration of any public comments, a final DOE Order and Manual on radioactive waste management, to be designated DOE O 435.1 and DOE M 435.1, will be developed and issued.

In DOE's implementation plan in response to DNFSB Recommendation 94–2, DOE stated that it would issue a final Order and Manual on radioactive waste management by September 30, 1998. DOE also agreed to requests from state regulators, the public, and the National Governors Association that the draft Order and Manual be made available for public review prior to issuance of the final Order and Manual. Any comments on the draft Order and Manual are needed by the date stated at the beginning of this Notice to allow DOE sufficient time to consider them consistent with DOE's commitment to the DNFSB to issue the final Order and Manual. The provisions of DOE 5820.2A would remain in effect until the effective date of DOE O 435.1 and DOE M 435.1.

Review Under the National Environmental Policy Act

The draft Order and Manual would not change the substantive requirements of the current Order, DOE 5820.2A. The revisions reflected in the Order and Manual include such procedural measures as: requiring more headquarters involvement in reviewing and approving low-level waste disposal facility performance assessments; delegating other authorities to field-level managers; requiring maintenance of operating basis procedures; and greater emphasis on performance-based requirements rather than prescriptive requirements. Because the draft Order and Manual amend or revise the existing Order but do not change its environmental effect, DOE has determined that this revision fits within the class of actions eligible for categorical exclusion found at paragraph A5 of Appendix A to subpart D, 10 CFR Part 1021. DOE has determined that there are no extraordinary circumstances related to the proposed Order and Manual that may affect the significance of the environmental impacts of the proposed Order and Manual, and that the proposed Order and Manual are not ''connected'' to other actions with potentially significant impacts or to other proposed actions with cumulatively significant impacts. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

Issued in Washington, DC July 31, 1998.

James M. Owendoff,

Acting Assistant Secretary for Environmental Management.

[FR Doc. 98–21040 Filed 8–5–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7962–025]

Baldwin Hydroelectric Corporation; Notice Denying Intervention and Rejecting Request for Rehearing

July 31, 1998.

By unpublished order of June 5, 1998, the Director, Office of Hydropower Licensing (Director), granted the

Baldwin Hydroelectric Corporation (Baldwin), licensee of the Baldwin Project No. 7962,[1] an extension of time from July 7, 1998, until January 7, 2000 to complete project construction. On July 6, 1998, Trout Unlimited and its New Hampshire and Vermont Councils (Trout Unlimited) moved to intervene in this post-licensing proceeding, and filed a request for rehearing of the order granting the extension.

The Commission entertains motions to intervene in or requests for rehearing of post-licensing proceedings only where the actions at issue involve a substantial or material change in either the plan of project development or the license's terms and conditions, or can adversely affect the rights of property-holders in a manner not contemplated by the license.[2] Extending the time to finish project construction makes no substantial or material change to the project, nor will it adversely affect any property holder's rights. Therefore Trout Unlimited's motion to intervene is denied and its request for rehearing is rejected.

This notice constitutes final agency action. Requests for rehearing by the Commission of this notice must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20987 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

[1] The license was originally issued in 1988, and transferred to Baldwin in 1991. 42 FERC ¶ 62,007 and 57 FERC ¶ 62,203.

[2] *See* Kings River Conservation District, 36 FERC ¶ 61,365 (1986).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–683–000]

Blazer Energy Corporation; Notice of Petition for Declaratory Order

July 31, 1998.

Take notice that on July 22, 1998, Blazer Energy Corporation (Blazer), a wholly owned subsidiary of Statoil Energy, Inc., 2899 Eisenhower Avenue, Alexandria, VA 22314, filed a petition pursuant to section 385.207(a)(2) of the Commission's Rules of Practice and Procedure for a declaratory order in Docket No. CP98–683–000 requesting that the Commission declare that certain facilities Blazer proposes to acquire from Columbia Gas Transmission Corporation (Columbia) are gathering facilities exempt from Commission jurisdiction under Section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Concurrently with this application, Columbia filed an application, in Docket No. CP98–684–000 (i) to abandon, by sale to Blazer, certain certificated facilities designated as Lines KA–7, KA–12, KA–13, and the Carbon Compressor Station, located in West Virginia; (ii) to abandon the services provided through the facilities to be sold; and (iii) to abandon a point of exchange with CNG Transmission Corporation and permission to amend Columbia's Exchange Agreement X–35 to remove that point.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 21, 1998, 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 385.211 and 18 CFR 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 protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20980 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–305–001]

Canyon Creek Compression Company; Notice of Compliance Filing

July 31, 1998.

Take notice that on July 29, 1998, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Third Revised Sheet No. 193 and Second Revised Sheet No. 194 to be effective August 1, 1998.

Canyon states that these tariff sheets were filed in compliance with the Commission's letter order issued July 17, 1998 in Docket No. RP98–305–000 (Letter Order). Canyon believes that the tariff revisions made in the instant filing will bring Canyon's Tariff into full compliance with the Commission's Order No. 587–G.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective August 1, 1998, pursuant to Order No. 587–G and the Letter Order.

Canyon states that copies of the filing are being mailed to Canyon's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP98–305.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20989 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–691–000]

Caprock Pipeline Company; Notice of Request Under Blanket Authorization

July 31, 1998.

Take notice that on July 24, 1998, Caprock Pipeline Company (Caprock), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP98–691–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations (18 CFR 157.205, 157.212) under the Natural Gas Act (NGA) for authorization to construct and operate a delivery tap and appurtenant facilities in Yoakum County, Texas, under Caprock's blanket certificate issued in Docket No. CP93–269–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Caprock proposes to construct and operate delivery point facilities on its main transmission system in Texas for

service to K N Westex Services Company (Westex), a provider of transportation and storage services, for use by new electrical power generation customers. It is stated that the facilities will be used to deliver approximately 60,000 Mcf of natural gas on a peak day and 5,400,000 Mcf on an annual basis to Westex. It is asserted that Caprock will be reimbursed for the $730,000 cost of the facilities by Golden Spread Electric Cooperative, Inc., GS Electric Generating Cooperative, Inc. and Denver City Energy Associates, L.P. It is stated that Caprock's FERC Gas Tariff does not prohibit additional delivery points. It is explained that the volume of gas delivered to Westex will be within Westex's existing contract quantity and that the proposal will not have any adverse impact on Caprock's peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20984 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–684–000]

Columbia Gas Transmission Corporation; Notice of Application for Abandonment

July 31, 1998.

Take notice that on July 22, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP98–684–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Blazer Energy Corporation (Blazer), a wholly owned subsidiary of Statoil Energy, Inc., certain certificated natural gas facilities, to abandon the service provided through the facilities to be sold, and to abandon an exchange service with CNG Transmission Corporation (CNG) and permission to amend the related exchange agreement to remove that point, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia states that Columbia and Blazer entered into a Purchase and Sale Agreement dated July 15, 1997, which provides that Columbia will sell to Blazer all of its interest in certain pipeline facilities located in Fayette, Raleigh, and Kanawha Counties, West Virginia. Columbia proposed (i) to abandon, by sale to Blazer, Columbia's interest in certificated facilities designed as Lines KA–7, KA–12, KA–13, and the Carbon Compressor Station, located in West Virginia; (ii) to abandon the services provided through the facilities to be sold; and (iii) to abandon a point of exchange with CNG Transmission Corporation and permission to amend Columbia's Exchange Agreement X–35 to remove that point.

Concurrently with this application, Blazer filed a petition for a declaratory order in Docket No. CP98–683–000 requesting that the Commission declare that certain facilities Blazer proposes to acquire from Columbia Gas Transmission Corporation (Columbia) are gathering facilities exempt from Commission jurisdiction under Section 1(b) of the Natural Gas Act (NGA).

Any person desiring to be heard or to make any protest with reference to said application should on or before August 21, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 Columbia to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20981 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–694–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

July 31, 1998.

Take notice that on July 24, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP98–694–000 a request pursuant to Sections 157.205, and 157.212, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to modify an existing point of delivery to Washington Gas Light Company (WGL) by constructing certain facilities in Prince William County, Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia requests authorization to modify its Robert Trent Jones point of delivery and provide service under existing rate schedules and within certificated entitlements. Columbia estimates that the proposed volumes will be approximately 20,600 Dth/day. The modification has been requested by WGL to provide additional firm transportation service for residential and commercial customers. WGL has not requested an increase in its total firm entitlements. Therefore, there is no impact on Columbia's existing peak day obligations to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20982 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–678–000]

Columbia Gas Transmission Corporation; Notice of Application

July 31, 1998.

Take notice that on July 21, 1998, Columbia Gas Transmission Corporation (Columbia) filed an abbreviated application in Docket No. CP98–678–000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations for a certificate of public convenience and necessity authorizing the continued operation of an existing natural gas storage field and related facilities, an order granting permission and approval to abandon certain natural gas storage field facilities and the conversion of two active injection/withdrawal storage wells to observation well status. Columbia's proposal is more fully described in its application which is on file with the Commission and open to public inspection.

Specifically, Columbia seeks the issuance of a certificate of public convenience and necessity authorizing:

(a) the continued operation of the Greenwood Storage Field in Steuben County, New York, and related facilities as presently constituted, as well as a formal recognition of the protective boundary surrounding the storage field to assure Columbia's right of eminent domain for the gas storage easements in the storage field under section 7(h) of the Natural Gas Act.

(b) the abandonment of Storage Well Lines 9008 and 9009 in their entirety and the reclassification and conversion of wells H–99 (the well tying into Line 9008) and H–114 (the well tying into line 9009) from injection/withdrawal wells to observation status, located in the Greenwood Storage Field.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 21, 1998, filed with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's Rules require that protestors provide copies of their protests to the party or parties against whom the protests are directed. 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.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filings it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have environmental comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

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 a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20985 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–6–34–000

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 31, 1998.

Take notice that on July 29, 1998, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective September 1, 1998:

Twenty-Eighth Revised Sheet No. 8A
Nineteenth Revised Sheet No. 8A.01
Twentieth Revised Sheet No. 8A.02

FGT states that it is requesting waiver of the Effective Dates prescribed in Section 27.A.1 of its Tariff to make an out-of-cycle filing to reset its base Fuel Reimbursement Charge Percentage (FRCP) for the current Summer Period at 2.96% effective September 1, 1998. This is the same fuel percentage currently being retained by FGT. FGT has experienced an over recovery of fuel for the three months ended June 30, 1998, with its actual fuel usage and lost and unaccounted for gas as a percentage of deliveries averaging 2.81%. FGT

anticipates the potential for this trend to continue through the end of the current Summer Period. However, FGT is precluded from automatically decreasing any further its base FRCP of 3.46%, accepted in Docket No. TM98–4–34–000 effective April 1, 1998, because the flex adjustment of <0.50>% accepted in Docket No. TM98–5–34–000 is the maximum allowed pursuant to Section 27.A.2.b of FGT's Tariff.

As a result, FGT is filing herein to reestablish its based FRCP at 2.96%. Approval of the instant filing would provide FGT the opportunity to make a downward flex adjustment at least seven days before the September 1, 1998 effective date in the event FGT deems it prudent to lower its FRCP further to mitigate operational problems experienced as a result of the over recovery of fuel and to minimize the balance of the deferred fuel account to be resolved in the next Summer Period. Also, if conditions warrant, FGT would be able to flex up from the new base FRCP to a maximum of 3.46% if unanticipated under recoveries of fuel occur.

Any person desiring to be heard or to protest this filing should file a motion to intervene of a 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 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 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20991 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–117–002]

KN Interstate Gas Transmission Co.; Notice of Proposed changes in FERC Gas Tariff

July 31, 1998.

Take notice that on July 28, 1998, KN Interstate Gas Transmission Co. (KNI) moved into effect certain rates and revised tariff sheets to its FERC Gas Tariff, Third Revised Volume Nos. 1–A and 1–B and Second Revised Volume Nos. 1–C and 1–D, the following tariff sheets to become effective August 1, 1998.

Third Revised Volume No. 1–A
Substitute Second Revised Sheet No. 4–A
Substitute Second Revised Sheet No. 4–B
Substitute Fifth Revised Sheet No. 4–D
Third Revised Volume No. 1–B
Substitute First Revised Sheet No. 24
First Revised Volume No. 1–C
Substitute Tenth Revised Sheet No. 4
First Revised Volume No. 1–D
Substitute First Revised Sheet No. 21

KNI states that such revised tariff sheets reflect changes in rates and tariff provisions pursuant to Section 4(e) of the Natural Gas Act (NGA), 15 U.S.C. Section 717c(e), and 18 CFR Section 154.206(b) of the Commission's regulations thereunder, and the Commission's order issued on February 26, 1998 in this proceeding, 82 FERC ¶ 61,186 (1998).

KNI has served copies of this filing upon all jurisdictional customers, interested State Commissions, and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 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 proceedings.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20994 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–53–003]

KN Interstate Gas Transmission Co.; Notice of Compliance Filing

July 31, 1998.

Take notice that on July 14, 1998, K N Interstate Gas Transmission Co. (KNI) tendered for filing its true-up plan to address fuel over or under recoveries that exist as of July 31, 1998.

KNI states that the report is being filed in compliance with the Commission's order issued July 1, 1998.

KNI states that copies of the filing have been mailed to each of KNI's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 7, 1998. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20995 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–304–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

July 31, 1998.

Take notice that on July 29, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Fourth Revised Sheet No. 409 and Second Revised Sheet No. 410 to be effective August 1, 1998.

Natural states that these tariff sheets were filed in compliance with the Commission's letter order issued July 17, 1998 in Docket No. RP98–304–000 (Letter Order). Natural believes that the tariff revisions made in the instant filing will bring Natural's Tariff into full compliance with the Commission's Order No. 587–G.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective August 1, 1998, pursuant to Order No. 587–G and the Letter Order.

Natural states that copies of the filing are being mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP98–304.

Any person desiring to protest this filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20988 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Nora Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 31, 1998.

Take notice that on July 27, 1998, Nora Transmission Company (Nora) tendered for filing as part of its FERC Gas Tariff, First, Revised Volume No. 1, the following revised tariff sheets to become effective August 1, 1998:

Substitute Second Revised Sheets No. 173

Nora states that the purpose of this filing is to comply with the Commission's Letter Order issued on July 20, 1998 in the captioned docket. In the July 20 Order, the Commission required Nora to include by reference or verbatim the CISB standards 4.3.5 and 4.3.16. Nora has incorporated by reference GISB standards 4.3.5 and 4.3.16 in its General Terms and Conditions, Section 39 of its FERC Gas Tariff.

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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20992 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–307–001]

Stingray Pipeline Company; Notice of Compliance Filing

July 31, 1998

Take notice that on July 29, 1998, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Third Revised Sheet No. 199 and Second Revised Sheet No. 200 to be effective August 1, 1998.

Stingray states that these tariff sheets were filed in compliance with the Commission's letter order issued July 17, 1998 in Docket No. RP98–307–000 (Letter Order). Stingray believes that the tariff revisions made in the instant filing will bring Stingray's Tariff into full compliance with the Commission's Order No. 587–G.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective August 1, 1998, pursuant to Order No. 587–G and the Letter Order.

Stingray states that copies of the filing are being mailed to Stingray's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP98–307.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20990 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–695–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

Issued July 31, 1998.

Take notice that on July 27, 1998, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252–2511, filed a request with the Commission in Docket No. CP98–695–000, pursuant to 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate as jurisdictional certain existing delivery point facilities that were initially constructed under Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA) authorized in blanket certificate issued in Docket No. CP82–413–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to operate certain existing delivery point facilities under Section 7(c) of the NGA and Tennessee's Part 157, Subpart F blanket certificate. Tennessee reports that the delivery point facilities are located in Franklin County, Alabama, Barren County, Kentucky, Scholharie County, New York, and Allen County, Kentucky, and that the delivery point facilities were constructed to implement transportation agreements under Section 311 of the NGPA. Tennessee states that granting the request would enable Tennessee to fully utilize these facilities for all transportation services, pursuant to Section 311 for the NGPA and Section 7 of the NGA and would increase the transportation options of customers on Tennessee's system.

Tennessee further states that delivery volumes through the existing delivery points would not impact Tennessee's peak day and annual deliveries. Tennessee reports that the proposed activity is not prohibited by its existing tariff and that Tennessee has sufficient capacity to accommodate the changes proposed without detriment or disadvantage to Tennessee's other customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the

request. If no protest is filed within the allowed time, 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 NGA.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20983 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–301–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

July 31, 1998.

Take notice that on July 29, 1998, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revision Volume No. 1, Substitute Fourth Revised Sheet No. 203 and Second Revised Sheet No. 203A to be effective August 1, 1998.

Trailblazer states that these tariff sheets were filed in compliance with the Commission's letter order issued July 17, 1998 in Docket No. RP98–301–000 (Letter Order). Trailblazer believes that the tariff revisions made in the instant filing will bring Trailblazer's Tariff into full compliance with the Commission's Order No. 587–G.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective August 1, 1998, pursuant to Order No. 587–G and the Letter Order.

Trailblazer states that copies of the filing are being mailed to Trailblazer's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP98–301.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20993 Filed 8–05–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–86–000]

Williston Basin Interstate Pipeline Company; Notice of Withdrawal

July 31, 1998.

Take notice that on July 29, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing a Notice of Withdrawal of certain proposed tariff sheets to be part of its FERC Gas Tariff, Second Revised Volume No. 1, that were filed by Williston Basin on July 20, 1998. Williston Basin is proposing to withdraw the following proposed tariff sheets:

Second Revised Volume No. 1
Sixteenth Revised Sheet No. 777
Twenty-fifth Revised Sheet No. 831
Twenty-fourth Revised Sheet No. 832

Williston Basin states that due to recent circumstances the information included in these tariff sheets is in error and therefore, Williston Basin moves to withdraw such tariff sheets.

Williston Basin also states that it does not believe any party will be prejudiced or harmed by the withdrawal of these tariff sheets as no party has intervened in this proceeding and the nature of the filing simply updates information on Williston Basin's Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a 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 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 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20986 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3147–000, et al.]

Alliant Service, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 30, 1998.

Take notice that the following filings have been made with the Commission:

1. Alliant Service, Inc.

[Docket Nos. ER98–3147–000 and ER98–3149–000]

Take notice that on July 24, 1998, Alliant Services, Inc., tendered additional cost information for filing in the above-referenced dockets.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Electric Power Co.

[Docket No. ER98–3259–000]

Take notice that on July 20, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an amendment to the non-firm transmission service agreement filed in the above-referenced docket. The amendment corrects the name of the prospective transmission service customer, Western Resources, Inc.

Wisconsin Electric renews its requested effective date of June 8, 1998. Wisconsin Electric is authorized to state that WRI joins in the requested effective date.

Copies of the filing have been served on WRI, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: August 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Company

[Docket No. ER98–3557–000]

Take notice that on June 30, 1998, Northeast Utilities Service Company (NUSCO) on behalf of its affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire (together the NU Companies), tendered for filing an

executed Purchase of Supplemental Capacity and Supplemental Energy agreement with New York Municipal Power Agency, dated August 19, 1996, and a First Amendment to the Agreement for Purchase of Supplemental Capacity and Supplemental Energy, dated June 26, 1998, pursuant to the NU Companies' market-based rate authority.

A copy of this filing was served upon the New York Municipal Power Agency.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Electric and Gas Company

[Docket No. ER98–3887–000]

Take notice that on July 24, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Northern Indiana Public Service Company (NIPSCO), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of June 25, 1998.

Copies of the filing have been served upon NIPSCO and the New Jersey Board of Public Utilities.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Southwest Power Pool

[Docket No. ER98–3888–000]

Take notice that on July 24, 1998, Southwest Power Pool tendered for filing an amendment to its Regional Open Access Tariff (Tariff), intended to reflect certain changes to the provisions of the Tariff concerning the payment of transmission losses.

SPP requests that the Commission allow these changes to become effective on or before September 1, 1998.

Copies of this filing were served upon all customers and transmission providers under the Tariff, and upon all affected state commissions.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Southwest Power Pool

[Docket No. ER98–3889–000]

Take notice that on July 24, 1998, Southwest Power Pool (SPP), tendered for filing eight executed service agreements and one unexecuted service agreement Short-Term Firm Point-To-Point transmission service and Non-Firm Point-To-Point firm transmission service under the SPP Open Access Transmission Tariff.

Copies of this filing were served upon each of the parties to these agreements.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER98–3890–000]

Take notice that on July 24, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Tractebel Energy Marketing, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Tractebel Energy Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Minnesota Power & Light Company

[Docket No. ER98–3891–000]

Take notice that on July 23, 1998, Minnesota Power & Light Company (MP), tendered for filing Supplement No. 5, Amendment to its Electric Service Agreement with the City of Pierz (Pierz). MP states that the amendment extends the terms of the agreement to December 31, 2010.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. NGE Generation, Inc.

[Docket No. ER98–3892–000]

Take notice that NGE Generation, Inc. (NGE Gen), on July 24, 1998, tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, service agreements (the Service Agreements) under which NGE Gen may provide capacity and/or energy to Vitol Gas & Electric LLC (Vitol), PP&L, Inc. (PP&L) and South Jersey Energy Company (South Jersey) in accordance with NGE Gen's FERC Electric Tariff, Original Volume No. 1.

NGE Gen has requested waiver of the notice requirements so that the Service Agreements with Vitol, PP&L and South Jersey become effective as of July 17, 1998, July 6, 1998 and July 1, 1998, respectively.

NGE Gen has served copies of the filing upon the New York State Public Service Commission, Vitol, PP&L, and South Jersey.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Central Power and Light Co., West Texas Utilities Co., Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket No. ER98–3893–000]

Take notice that on July 24, 1998, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies), tendered for filing service agreements under which the CSW Operating Companies will provide firm point-to-point transmission service to Southwestern Public Service Company (SPS), Tenaska Power Services Company (Tenaska), and Entergy Power Marketing Corp. (Entergy) in accordance with the CSW Operating Companies' open access transmission service tariff. The CSW Operating Companies also submitted notices of cancellation of the service agreements.

The CSW Operating Companies state that a copy of the filing has been served on SPS, Tenaska and Entergy.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power

[Docket No. ER98–3894–000]

Take notice that on July 24, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with West Penn Power doing business as Allegheny Energy under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

The Company requests an effective date of July 14, 1998, the date of filing the service agreement.

Copies of the filing were served upon West Penn Power doing business as Allegheny Energy, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER98–3895–000]

Take notice that on July 24, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Tractebel Energy Marketing, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

The Company requests an effective date of July 24, 1998, the date of filing the Service Agreement.

Copies of the filing were served upon Tractebel Energy Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Co. (Minnesota) Northern States Power Co. (Wisconsin)

[Docket No. ER98–3896–000]

Take notice that on July 24, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and El Paso Energy Marketing Company.

NSP requests that the Commission accept the agreement effective June 25, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Public Service Corporation

[Docket No. ER98–3903–000]

Take notice that on July 24, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Short Term Firm Transmission Service Agreement between WPSC and Tractebel Energy Marketing, Inc., providing for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

WPSC requests an effective date to make the agreement effective on the date of execution by WPSC, July 7, 1998.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Public Service Corporation

[Docket No. ER98–3904–000]

Take notice that on July 24, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Tractebel Energy Marketing, Inc., providing for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER98–3905–000]

Take notice that on July 24, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with West Penn Power doing business as Allegheny Energy under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

The Company requests an effective date of July 24, 1998, the filing the date of filing the Service Agreement.

Copies of the filing were served upon West Penn Power doing business as Allegheny Energy, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Upper Peninsula Power Company

[Docket No. ER98–3906–000]

Take notice that on July 16, 1998, Upper Peninsula Power Company tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission service under its open access transmission service tariff for service to Aquila Power Corporation.

UPPCO requests a waiver of the notice period and proposes to make the service agreement effective as of July 20, 1998.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Southern Indiana Gas and Electric Company

[Docket No. ER98–3907–000]

Take notice that on July 24, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing three (3) service agreements for firm transmission service under Part II of its Transmission Services Tariff with Avista Energy, Inc., Northern/AES Energy, L.L.C., NP Energy Inc., and two (2) service agreements for non-firm transmission service under Part II of its Transmission Services Tariff with Avista Energy, Inc., Northern/AES Energy, L.L.C.

SIGECO requests waiver of the 60-day prior notice requirement to allow the service agreements to become effective as of July 13, 1998.

Copies of the filing were served upon each of the parties to the service agreement.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER98–3908–000]

Take notice that on July 24, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the SCANA Energy Marketing, Inc., under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the SCANA Energy Marketing Inc.

NUSCO requests that the Service Agreement become effective July 22, 1998.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. FirstEnergy System

[Docket No. ER98–3909–000]

Take notice that on July 24, 1998, FirstEnergy System tendered for filing Service Agreements to provide Firm Point-to-Point Transmission Service to Cinergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc., and service to LG&E Energy Marketing, Inc., as the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under these Service Agreements is July 15, 1998, for the above mentioned Service Agreements in this filing.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Western Resources, Inc.

[Docket No. ER98–3910–000]

Take notice that on July 24, 1998, Western Resources, Inc., tendered for filing an agreement between Western Resources and Cinergy Operating Companies. Western Resources states that the purpose of the agreement is to permit the customers to take service under Western Resources' market-based power sales tariff on file with the Commission.

The agreement is proposed to become effective June 24, 1998.

Copies of the filing were served upon Cinergy Operating Companies and the Kansas Corporation Commission.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Southern Indiana Gas and Electric Company

[Docket No. ER98–3911–000]

Take notice that on July 24, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing the following agreements concerning the provision of electric service to the City of Cannelton, Indiana:

1. Agreement for the Supply of Electric Energy Between the City of Cannelton, Indiana and Southern Indiana Gas and Electric Company.
2. Service Agreement for Network Integration Transmission Service.
3. Transmission Service Specifications For Network Integration.
4. Network Operating Agreement.

SIGECO requests waiver of the 60-day prior notice requirement to allow all of the agreements to become effective as of July 1, 1998.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Entergy Services, Inc.

[Docket No. ER98–3912–000]

Take notice that on July 24, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Tractebel Energy Marketing, Inc.

Entergy Services requests that the Service Agreements be made effective as rate schedules no later than July 1, 1998.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Entergy Services, Inc.

[Docket No. ER98–3913–000]

Take notice that on July 24, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Northern States Power Company for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket No. ER98–3914–000]

Take notice that on July 24, 1998, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies), tendered for filing service agreements establishing Entergy Power Marketing Corp. (Entergy), and Duke/Louis Dreyfus, L.L.C. (Duke), as customers under the CSW Operating Companies' market-based rate power sales tariff.

The CSW Operating Companies request an effective date of June 25, 1998, for the agreement with Entergy and an effective date of June 29, 1998, for the agreement with Duke and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on Entergy and Duke.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER98–3926–000]

Take notice that on July 24, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 33 to add the City of Hagerstown, the Town of Front Royal, and the Town of Thurmont to Allegheny Power's Open Access Transmission Tariff which has been submitted for filing in Docket No. OA96–18–000.

Allegheny Power requests a waiver of notice requirements and asks the Commission to honor the proposed effective date of June 25, 1998, as specified in the agreement negotiated by the parties.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–21018 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC96–19–034, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 29, 1998.

Take notice that the following filings have been made with the Commission:

1. California Independent System Operator Corporation

[Docket Nos. EC96–19–034 and ER96–1663–035]

Take notice that on July 24, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a compliance filing, which includes certain revised ISO Tariff sheets and reports.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced dockets, including the California Public Utilities Commission.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corp.

[Docket No. EC98–47–000]

Take notice that on July 23, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing pursuant to Section 203 of the Federal Power Act an application for Commission approval to effect a corporate reorganization which involves the creation of a holding company and the transfer of certain contracts, all as more fully set forth in the application.

Comment date: August 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Capital and Trade, Inc.

[Docket No. EC98–48–000]

Take notice that on July 24, 1998, Cinergy Capital and Trade, Inc. (CCT), tendered for filing an application pursuant to Section 203 of the Federal Power Act for authorization of a transaction whereby 1998, Cinpower Trust (Cinpower), will acquire 100 percent of the ownership interest in CinCap IV, L.L.C., (CinCap IV) from CCT.

This filing also serves as notice of the change in status of CinCap IV as a result of the Cinpower transaction.

Comment date: August 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Panda Paris, Power, L.P.

[Docket No. EG98–99–000]

Take notice that on July 23, 1998, Panda Paris Power, L.P. (Panda Paris), 4100 Spring Valley Suite 1001, Dallas, Texas 75244 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Panda Paris is a Delaware limited partnership. Panda Paris plans to construct a 1,000 megawatt, natural gas-fired generating facility in or near Paris, Texas, within the region governed by the Electric Reliability Council of Texas (ERCOT). Electricity generated by the facility will be sold at wholesale to one or more power marketers, utilities, cooperatives or other wholesalers.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Panda Guadalupe Power, L.P.

[Docket No. EG98–100–000]

Take notice that on July 23, 1998, Panda Guadalupe Power, L.P. (Panda Guadalupe), 4100 Spring Valley Suite 1001, Dallas, Texas 75244 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Panda Guadalupe is a Delaware limited partnership. Panda Guadalupe plans to construct a 750 megawatt, natural gas-fired generating facility within the region governed by the Electric Reliability Council of Texas (ERCOT). Electricity generated by the facility will be sold at wholesale to one or more power marketers, utilities, cooperatives or other wholesalers.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Rumford Power Associates Limited Partnership

[Docket No. EG98–103–000]

On July 24, 1998, Rumford Power Associates Limited Partnership (Rumford c/o Dennis J. Duffy, Esq., Partridge, Snow & Hahn, 180 South Main Street, Providence, Rhode Island 02903, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Rumford will own and operate an approximately 265 megawatt electric generation facility located in Rumford, Maine, producing electricity for sale exclusively at wholesale.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Niagara Mohawk Power Corp. Steven & Thompson Paper Co., Inc.

[Docket Nos. EL97–35–001 and QF86–853–002]

Take notice that on July 2, 1998, and July 6, 1998, Niagara Mohawk Power Corporation and Stevens & Thompson Paper Company, Inc., tendered for filing information requests in compliance with the Commission's June 2, 1998, order in the above-referenced dockets.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. British Columbia Power Exchange Corporation

[Docket No. EL98–64–000]

Take notice that on July 23, 1998, the British Columbia Power Exchange Corporation (Powererex) filed in the above-referenced docket pursuant to Rule 207(a)(2) of the Commission's Regulations, a Petition for Declaratory Order to determine whether implementation by Powerex's parent the British Columbia Hydro and Power Authority (BC Hydro of a transmission rate directive of the British Columbia Utilities Commission (BCUC) would adversely affect Powerex's power marketing authorization from the Commission.

Powerex states that in a decision issued April 23, 1998 in BC Hydro's Wholesale Transmission Services Application, the BCUC ruled that BC Hydro should adopt a locationally-sensitive wholesale transmission rate for long-term firm point-to-point service. However, before implementing such rate form, BC Hydro was ordered to file a Petition for Declaratory Order to determine whether rate form would be acceptable to the Commission within the context of the power marketing authorization issued to Powerex in British Columbia Power Exchange Corporation, 80 FERC ¶ 61,343 (1997).

Powerex states that its Petition for Declaratory Order is filed in compliance with the BCUC's directive. Powerex requests the Commission to declare that implementation of the rate form preferred by the BCUC will not cause the Commission to reconsider its prior determination that BC Hydro's wholesale transmission tariff adequately mitigates transmission market power, and will not result in denial of access by Powerex to U.S. markets or otherwise jeopardize Powerex's power marketing authorization.

Comment date: August 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3854–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to Plum Street Energy Marketing, Inc., (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3855–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to NEV East, L.L.C. (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3856–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to T.M. Bier & Associates (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3857–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to Central Hudson Gas & Electric Corporation (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3858–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to Singer Holding Corp, d/b/a Robison Energy (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3859–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to Total Energy Inc., (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3860–000]

Take notice that on July 23, 1998 Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to Northeast Utilities Service Company (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3864–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to Select Energy, Inc., (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3866–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to Amerada Hess Corporation (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3868–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to Metromedia Energy, Inc., (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3869–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide

transmission service pursuant to its Open Access Transmission Tariff to mc2 Inc. (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3870–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to Strategic Power Management (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3871–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to Columbia Energy (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–3872–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to Eastern Power Distribution, Inc., (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3874–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to Energis Resources, Inc., (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3875–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to DTE Energy Trading, Inc., (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3876–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to Colonial Energy, Inc., (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3877–000]

Take notice that on July 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide transmission service pursuant to its Open Access Transmission Tariff to DukeSolutions, Inc., (Customer).

Con Edison states that a copy of this filing has been served by mail upon Customer and that a copy of this filing has been served by mail upon the New York State Public Service Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Cleco Corporation

[Docket No. ER98–3878–000]

Take notice that on July 23, 1998, Cleco Corporation, (Cleco), tendered for filing an umbrella service agreement under which Cleco will make market based power sales under its MR–1 tariff with Avista Energy, Inc.

Cleco states that a copy of the filing has been served on Avista Energy, Inc.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Cleco Corporation

[Docket No. ER98–3879–000]

Take notice that on July 23, 1998, Cleco Corporation (Cleco), tendered for filing an umbrella service agreement under which Cleco will make market based power sales under its MR–1 tariff with Entergy Power Marketing Corporation.

Cleco states that a copy of the filing has been served on Entergy Power Marketing Corporation.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Cleco Corporation

[Docket No. ER98–3880–000]

Take notice that on July 23, 1998, Cleco Corporation, (Cleco), tendered for filing an umbrella service agreement under which Cleco will make market based power sales under its MR–1 tariff with Aquilla Power Corporation.

Cleco states that a copy of the filing has been served on Aquilla Power Corporation.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Cleco Corporation

[Docket No. ER98–3881–000]

Take notice that on July 23, 1998, Cleco Corporation, (Cleco), tendered for filing an umbrella service agreement under which Cleco will make market based power sales under its MR–1, tariff with Enron Power Marketing, Inc.

Cleco states that a copy of the filing has been served on Enron Power Marketing, Inc.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Portland General Electric Co.

[Docket No. ER98–3882–000]

Take notice that on July 23, 1998, Portland General Electric Company (PGE), tendered for filing under PGE's Market-Based Rate Tariff, (Docket No. ER98–1643–000) a revised un-executed Service Agreement for Service at Market-Based Rates with the California Power Exchange pursuant to the Commission's order in 83 FERC ¶ 61,315.

Pursuant to the Commission's order issued June 25, 1998, PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the un-executed Service Agreement to become effective March 31, 1998.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Entergy Services, Inc

[Docket No. ER98–3883–000]

Take notice that on July 23, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing an executed Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and PECO Energy Company for the sale of power under Entergy Services' Rate Schedule SP.

Entergy Services requests that the Service Agreement become effective June 23, 1998.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Public Service Company of New Mexico

[Docket No. ER98–3884–000]

Take notice that on July 23, 1998, Public Service Company of New Mexico (PNM), submitted for filing an unexecuted service agreement, for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff, with American Electric Power Service Corporation, dated July 22, 1998. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM requests an effective date for the service agreement of June 24, 1998.

Copies of the filing have been sent to American Electric Power Service Corporation and to the New Mexico Public Utility Commission.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. FirstEnergy Trading and Power Marketing, Inc.

[Docket No. ER98–3885–000]

Take notice that on July 23, 1998, FirstEnergy Trading and Power Marketing, Inc., notified the Commission that it had terminated its power sales contracts with Federal Energy Sales, Inc., and The Power Company of America, L.P., effective June 30, 1998.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Union Electric Company

[Docket No. ER98–3886–000]

Take notice that on July 23, 1998, Ameren Services Company (Ameren), tendered for filing Service Agreements for Market Based Rate Power Sales between Ameren and Amoco Energy Trading Corp., Aquila Power Corp., Duke Energy Trading and Marketing, Dynegy Marketing and Trade, Engage Energy-US, Entergy Power Marketing Corp., Noram Energy Services, Inc., OG&E Energy Resources, Inc., PG&E Energy Trading, Southern Energy Marketing, Sonat Power Marketing, Inc., and Tenaska Power Services Company. Ameren asserts that the purpose of the Agreements is to permit Ameren to make sales of capacity and energy at market based rates to the parties pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285.

Comment date: August 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Pacific Gas & Electric Company

[Docket No. OA97–515–001]

Take notice that on July 24, 1998, Pacific Gas & Electric Company (PG&E) filed revised standards of conduct under Order Nos. 889 *et seq.*[1] The revised standards were submitted in response to the Commission's March 12, 1998, order on standards of conduct.[2]

PG&E states that it has served copies of its revised standards of conduct upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment date: August 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–21017 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–P

[1] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, order on rehearing, 62 FR 12484 (March 14, 1997); Order No. 889–B, rehearing denied, 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

[2] Cambridge Electric Light Company, et al., 82 FERC ¶ 61,246 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1421–002, et al.]

PEC Energy Marketing, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 31, 1998.

Take notice that the following filings have been made with the Commission

1. PEC Energy Marketing, Inc.

[Docket No. ER97–1431–002]

Take notice that on July 28, 1998, PEC Energy Marketing, Inc. (PEC) tendered for filing, pursuant to Rule 205, 18 CFR 385.205, an amendment to its notice of change of circumstances filed on May 6, 1998, with respect to its original petition for waivers and blanket approvals under various regulations of the Commission and the order accepting its FERC Electric Rate Schedule No.1 previously issued by the Commission.

PEC intends to engage in electric power and energy transactions at retail in Maine and in the NEPOOL region. In transactions where PEC sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party and pursuant to the orders and

regulations of applicable state public service commissions. As further outlined in the notice of change of circumstances, PEC reports that it is no longer an affiliate of GPU, Inc., a public utility holding company and the parent company of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company. GPU, Inc. no longer has any ownership interest in PEC. PEC is 100% owned by Michael Polsky, an individual, through his affiliate, Polsky Energy Company.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Advance Energy Systems, Inc.

[Docket No. ER98–1992–000]

Take notice that on July 27, 1998, 1998 Medical Area Total Energy Plant, Inc. (MATEP) filed an amendment to a long-term service agreement filed on June 26, 1998 between MATEP and MATEP LLC under MATEP's market-based tariff, FERC Electric Tariff Original Volume No. 1. The amendment reflects rates for services provided pursuant to the service agreement. MATEP renews its request for an effective date on June 1, 1998 for the service agreement.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corporation

[Docket No. ER98–3602–000]

Take notice that on July 2, 1998, Central Hudson Gas & Electric Corporation (Central Hudson), tendered for filing proposed amendments to the Form of Service Agreement For Retail Access of its Open Access Transmission Tariff on file in Docket No. OA96–14–000 to implement retail access to its system as required by orders of the New York Public Service Commission. The details of the proposed amendments are more fully described in Central Hudson's filing.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Rochester Gas and Electric Corp.

[Docket No. ER98–3615–000]

Take notice that on July 28, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing with the Federal Energy Regulatory Commission a request to withdraw the Service Agreement filed between RG&E and Ontario Hydro in the above-reference proceeding.

A copy of the serviced agreement was served on the New York Public Service Commission and Ontario Hydro.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER98–3915–000]

Take notice that on July 27, 1998, Pacific Gas and Electric Company (PG&E) tendered for filing a Notice of Termination for all Non-Firm Open Access Transmission Tariff (OAT Tariff) Service Agreements entitled ''Service Agreement for Non-Firm Point-to-Point Transmission Service'' (Service Agreements) between PG&E and Southern Energy Trading and Marketing, Inc., Bonneville Power Administration Power Business, AIG Trading Corporation, Arizona Public Service Company, Williams Energy Services Company, Idaho Power Company, Aquila Power Corporation, San Diego Gas & Electric Company, Citizens Lehman Power Sales, Cinergy Operating Companies, Western Power Services, Inc., Salt River Project PacifiCorp, Powerex, NorAm Energy Services, Inc., Equitable Power Services Company, PanEnergy Trading and Market Services, L.L.C., PECO Energy Company—Power Team, LG&E Energy Marketing, Inc., Pacific Gas and Electric Company, Sierra Pacific Power Company, Southern California Edison Company, Kansas City Power and Light Company, and Constellation Power Sources.

The Service Agreements were entered into for the purpose of providing non-firm point-to-point transmission service under the OAT Tariff. The effective date of termination is March 31, 1998 in compliance with the Commission's October 30, 1997 Order or such other date that the Commission deems appropriate for termination. PG&E is requesting any necessary waivers.

Copies of this filing have been served upon the affected customers, all parties designated on the official service list compiled by FERC in FERC Docket No. OA96–28–000 and the California Public Utilities Commission.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. The Montana Power Company

[Docket No. ER98–3916–000]

Take notice that on July 27, 1998, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a firm Point-To-Point Transmission Service Agreement with Stone Container Corporation (Stone Container) under Montana's FERC Electric Tariff, Second Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Stone Container.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Texas Utilities Electric Company

[Docket No. ER98–3918–000]

Take notice that, on July 27, 1998, Texas Utilities Electric Company (TU Electric) tendered for filing an executed Amendment to Transmission Service Agreement (TSA Amendment) with Tex-La Electric Cooperative of Texas, Inc. for service under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA Amendment that will permit it to become effective on or before the service commencement date under the TSA Amendment. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on Tex-La Electric Cooperative of Texas, Inc., as well as the Public Utility Commission of Texas.

Comment date: August 17, 1998, in accordance with Standard paragraph E at the end of this notice.

8. Kansas City Power & Light Company

[Docket No. ER98–3919–000]

Take notice that on July 27, 1998, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated July 17, 1998, between KCPL and PacifiCorp Power Marketing, Inc. KCPL proposes an effective date of July 17, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas City Power & Light Company

[Docket No. ER98–3920–000]

Take notice that on July 27, 1998, Kansas City Power & Light Company (KCPL) tendered for filing its report of transactions under KCPL's GSS Tariff for the second quarter of 1998.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Rochester Gas and Electric Corporation

[Docket No. ER98–3921–000]

Take notice that on July 27, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing with the Federal Energy Regulatory Commission an unexecuted copy of a service agreement and network operating agreement between RG&E and the Village of Spencerport, New York.

A copy of the service agreement was served on the New York Public Service Commission and on the Village of Spencerport and its Counsel.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Rochester Gas and Electric Corporation

[Docket No. ER98–3922–000]

Take notice that on July 27, 1998, Rochester Gas and Electric Corporation (RG&E) tendered for filing with the Federal Energy Regulatory Commission an unexecuted copy of a service agreement and network operating agreement between RG&E and the Village of Angelica, New York.

RG&E respectfully requests that the service agreement and network operating agreement be accepted as filed and that the Commission grant waiver of the 60 day filing requirement and accept the service agreement and network operating agreement effective July 1, 1998.

A copy of the service agreement was served on the New York Public Service Commission and on the Village of Angelica and its Counsel.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER98–3923–000]

Take notice that on July 27, 1998, Northeast Utilities Service Company (NUSCO), on behalf of its operating affiliates, The Connecticut Light and Power company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire, tendered for filing a Service Agreement with Coral Power, L.L.C. (Coral) under the Northeast Utilities System Companies' Sale for Resale Tariff No. 7 Market Based Rates. NUSCO requests an effective date of August 1, 1998.

NUSCO states that a copy of its submission has been mailed or delivered to Coral.

Comment date: August 17, 1998, in accordance with Standard paragraph E at the end of this notice.

13. South Carolina Electric & Gas Company

[Docket No. ER98–3924–000]

Take notice that on July 27, 1998, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing Morgan Stanley Capital Group, Inc. (''MSCG'') as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon MSCG and the South Carolina Public Service Commission.

Comment date: August 17, 1998, in accordance with Standard paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER98–3925–000]

Take notice that on July 27, 1998, New England Power Company (NEP) tendered a supplement to an amendment to Granite State Electric Company's service agreement under NEP's FERC Electric Tariff, Original Volume No. 1. NEP requests an effective date for the Supplement of the earlier of NEP's divestiture of certain of its generating assets or sixty days from the date of filing.

Comment date: August 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. MidCon Power Services Corp.

[Docket No. ER98–3927–000]

Take notice that MidCon Power Services Corp. (MPS), a broker and marketer of electric power, has filed a notice of cancellation pursuant to 18 CFR 35.15, as to a power sale and purchase agreement between MPS and The Power Company of America, L.P. (PCA), dated December 22, 1997.

MPS has also filed a motion for waiver of the 60-day advance filing requirement under 18 CFR 35.15, so as to permit MPS to terminate service to PCA as of August 15, 1998.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER98–3928–000]

Take notice that on July 27, 1998, PECO Energy Company (PECO) filed a Service Agreement dated July 13, 1998 with South Texas electric Cooperative (SOUTH TEXAS) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds SOUTH TEXAS as a customer under the Tariff.

PECO requests an effective date of July 13, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to SOUTH TEXAS and to the Pennsylvania Public Utility Commission.

Comment date: August 17, 1998, in accordance with Standard paragraph E at the end of this notice.

17. New York State Electric & Gas Corporation

[Docket No. ER98–3931–000]

Take notice that on July 28, 1998, New York State Electric & Gas Corporation (NYSEG) tendered for filing a request for approval of a revised Form of Service Agreement under NYSEG's Open Access Transmission Tariff (OATT) and other revisions to the OATT applicable to all NYSEG customers who take service under its retail access program. NYSEG also requested an order granting any necessary waivers, including a waiver of the Commission's 60-day notice period.

The OATT modifications detailed in NYSEG's May 28, 1998, request for approval of its form of service agreement for the retail access program and for an order granting any necessary waivers are not modified except as explicitly described in this filing.

With the instant filing, NYSEG seeks approval of rates specific to ancillary services provided to unbundled retail access customers. NYSEG requests an effective date of August 1, 1998, for the modifications to the OATT described above. That date will coincide with the date contemplated by the New York Public Service Commission (NY Commission) for the implementation of NYSEG's retail access program. NYSEG has served copies of the filing on the NY Commission and customers taking service under the OATT.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Co.

[Docket No. ER98–3932–000]

Take notice that on July 28, 1998, Virginia Electric and Power Company tendered for filing a Notice of Cancellation of the unexecuted Service Agreement with The Power Company of America, L.P. The canceled service agreement has been designated as Service Agreement No. 80 under FERC Electric Tariff First Revised Volume No. 4.

Copies of the filing were served on The Power Company of America, L.P., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Inland Power & Light Co.

[Docket No. ER98–3933–000]

Take notice that on July 28, 1998, Inland Power & Light Company (Inland) submitted for filing a Power Transfer Agreement between Inland Power & Light Company and Public Utility District No. 2 of Grant County, and an Asset Purchase Agreement between Inland Power & Light Company and Public Utility District No. 1 of Pend Oreille County pursuant to section 205 of the Federal Power Act, and section 35.12 of the Regulations of the Federal Energy Regulatory Commission (18 CFR 35.12).

Inland requests that the agreements be accepted with a currently effective date of August 17, 1998, and a retroactively effective date for the Power Transfer Agreement of March 1, 1991.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Clinton Energy Management Services, Inc.

[Docket No. ER98–3934–000]

Take notice that on July 28, 1998, Clinton Energy Management Services, Inc. (Clinton Energy) tendered for filing and acceptance Clinton Energy's Rate Schedule FERC No. 1; request for grant of certain blanket approvals, including the authority to sell electricity at market-based rates; and request for waiver of certain Commission regulations.

Clinton Energy intends to engage in wholesale electric power and energy purchases and sales as a marketer.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Northern Indiana Public Service Company

[Docket No. ER98–3935–000]

Take notice that on July 27, 1998, Northern Indiana Public Service Company tendered for filing its Transaction Report for short-term transactions for the second quarter of 1998 pursuant to the Commission's order issued January 10, 1997 in *Northern Indiana Public Service Company*, 78 FERC ¶ 61,015 (1997).

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Tucson Electric Power Company

[Docket No. ER98–3936–000]

Take notice that on July 27, 1998, Tucson Electric Power Company (Tucson), tendered for filing a Transaction Report regarding power purchases and sales under its Market-Based Power Sales Tariff for quarter ended June 30, 1998.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Tucson Electric Power Company

[Docket No. ER98–3938–000]

Take notice that on July 27, 1998, Tucson Electric Power Company (Tucson), tendered for filing a Transaction Report regarding power purchases and sales under its Market-Based Power Sales Tariff for Affiliate Sales for quarter ended June 30, 1998.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Entergy Services, Inc.

[Docket No. ER98–3939–000]

Take notice that on July 28, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Duke Louis-Dreyfus for the sales of power under Entergy Services' Rate Schedule SP.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Washington Water Power Company

[Docket No. ER98–3942–000]

Take notice that on July 28, 1998, Washington Water Power Company tendered for filing an executed Mutual Netting Agreement for allowing arrangements of amounts which become due and owing to one Party to be set off against amounts which are due and owing to the other Party with The Power Company of America, L.P. WWP requests waiver of the notice requirement and requests an effective date of July 1, 1998 for net billing of transactions effective June 1, 1998.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Central Main Power Company

[Docket No. ER98–3943–000]

Take notice that on July 28, 1998, Central Maine Power Company (CMP) tendered for filing an executed service agreement for sale of capacity and/or energy entered into with City of Holyoke Gas & Electric Dept. Service will be provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP's FERC Electric Tariff, Original Volume No. 4.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. South Carolina Electric & Gas Co.

[Docket No. ER98–3947–000]

Take notice that on July 28, 1998, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing Entergy Power Marketing Corporation (EPMC) as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon EPMC and the South Carolina Public Service Commission.

Comment date: August 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–21019 Filed 8–5–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30458; FRL–6020–5]

K-I Chemical U.S.A. Inc.; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by September 8, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30458] and the file symbols to: Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM-22), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 247, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 305–7740, e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 63588–RN. Applicant: K-I Chemical U.S.A., Inc. 11 Martine Ave., 9th Floor, White Plains, NY 10606. Product Name: Prohexanedione Calcium Manufacturing Use Product. Herbicide. Active ingredient: Prohexadione calcium [cyclohexanecarboxylic acid 3,5-dioxo-4-(1-oxopropyl)-, ion (1-) calcium, calcium salt] at 91 percent. Proposed classification/Use: General. For formulating use only.

2. File Symbol: 63588–O. Applicant: K-I Chemical U.S.A., Inc. Product Name: Baseline Plant Regulator. Active ingredient: Prohexadione calcium [cyclohexanecarboxylic acid 3,5-dioxo-4-(1-oxopropyl)-, ion (1-) calcium, calcium salt] at 75 percent. Proposed classification/Use: General. For use on peanuts.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30458] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30458]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: July 29, 1998.

Arnold E. Layne,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–21035 Filed 8–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30377B; FRL–6016–3]

Novartis Seeds; Approval of a Pesticide Product Amended Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Novartis Seeds Incorporation to conditionally amend the plant pesticide product involving a changed use pattern of the product pursuant to the provisions of section 3(c)(7)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Michael Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 14, 9th floor, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8715; e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of January 13, 1995 (60 FR 3209) (FRL–4928–9), which announced that Ciba-Geigy Corporation (Ciba-Seeds), 3054 Cornwallis Road, P.O. Box 12257, Research Triangle Park, NC, 27709, (now Novartis Seeds), had submitted an application to register the transgenic plant pesticide B.t.k. CryIA(b) Insect Control Protein as Produced in Corn (EPA File Symbol 66736-R) containing the active ingredient *Bacillus thuringiensis* delta-endotoxin as produced in corn by a cryIA(b) gene and its controlling sequences as found on plasmid vector pCIB4431 0.0001-0.0018 percent total plant protein an active ingredient not included in any previously registered product.

The application was approved on August 9, 1995, and was published in the **Federal Register** of February 14, 1996 (61 FR 5768) (FRL–4980–5), involving a changed use pattern, to include in its presently registered use, a new use for full commercial use in field corn (EPA Registration Number 66736-1). The registration was conditionally amended to allow additional use of the product for food and feed in field corn in accordance with FIFRA section 3(c)(7)(B).

On March 17, 1998 the amendment of this registration was approved as ''*Bacillus Thuringiensis* European Corn Borer Control Protein'' to include popcorn, containing the active ingredient *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production (pCIB4431 in corn) involving a changed use pattern. This use is conditional and requires insect resistance data management, USDA NC-205 guidelines for refuge must be followed for popcorn, and monitoring for resistance management of the registration.

A conditional registration may be granted under section 3(c)(7)(B) of FIFRA for a product involving a changed use pattern where certain data are lacking, on condition that such data are received as specified by EPA and the applicant has submitted satsifactory data pertaining to the proposed additional use and the amended registration would not significantly increase the risk of any unreasonable adverse effect.

The Agency has considered the available data on the risks associated with the proposed use of *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production (pCIB4431 in corn), and information on social, economic, and environmental benefits to be derived from such use. Based on these reviews, the Agency was able to make basic environmental, health, and safety determinations which show that use of *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production (pCIB4431 in corn) consistent with the terms and conditions of registration during the period of conditional registration will not significantly increase the risk of unreasonable adverse effect on the environment. These products are conditionally registered in accordance with FIFRA section 3(c)(7)(B).

If the conditions are not complied with the registration will be subject to cancellation in accordance with FIFRA section 6(e). The registration will automatically expire on midnight April 1, 2001.

More detailed information on the conditional registration is contained in an EPA Pesticide Fact Sheet on *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production (pCIB4431 in corn).

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: July 28, 1998.

Janet L. Andersen,

Director, Biopesticides Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–21036 Filed 8–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00542; FRL–5797–9]

Guidance for Identifying Pesticides That Have a Common Mechanism of Toxicity; Notice of Availability and Solicitation of Public Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and solicitation of public comments.

SUMMARY: EPA is soliciting comments on a proposed pesticide policy guidance document entitled ''Guidance for Identifying Pesticide Chemicals That Have a Common Mechanism of Toxicity, for Use in Assessing the Cumulative Toxic Effects of Pesticides.'' This proposed guidance document was developed from a background document that was announced and made available to the public for comment, and discussed publicly at the Federal Insecticide, Fungicide, and Rodenticide (FIFRA) Science Advisory Panel (SAP) meeting of March 19-20, 1997. Interested parties may request a copy of the Agency's proposed guidance document as set forth in the ADDRESSES unit of this Notice.

DATES: Comments must be received by September 8, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

This Notice and the proposed guidance document described herein are available by mail or electronically. To obtain electronic copies follow the instructions listed under Unit I. of this document. To obtain copies by mail contact: Elizabeth Doyle, Office of Pesticide Programs, Health Effects Division (7509C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 718G, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 308–2722, e-mail: doyle.elizabeth@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Elizabeth Doyle at the address or telephone number listed above.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

A. Internet

Electronic copies of this document and the guidance document are available from the EPA Home Page at the Federal Register--Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/). Copies are also available electronically from EPA's Office of Pesticide Programs Home Page (http://www.epa.gov/pesticides) under ''FQPA, Science Issues.''

B. Fax-On-Demand

Using a faxphone call 202–401–0527 and select item 6055 for a copy of the guidance document.

II. Background

This **Federal Register** notice announces the availability of the proposed EPA pesticide policy guidance document entitled ''Guidance for Identifying Pesticide Chemicals That Have a Common Mechanism of Toxicity, for Use in Assessing the Cumulative Toxic Effects of Pesticides.'' This guidance document was developed by EPA in response to the recent amendments to FIFRA and the Federal Food, Drug, and Cosmetic Act (FFDCA) as promulgated by the Food Quality Protection Act of 1996 (FQPA). These amendments require EPA to consider in their process of determining safety of a given pesticide the possibility of cumulative toxic effects resulting from aggregate exposure to the pesticide and other pesticides that are toxic from a common mechanism. Hence, in assessing the risks posed by a given pesticide, EPA must also assess the combined risks to human health that can result from exposure to the pesticide and other pesticides that have a common mechanism of toxicity. The guidance document describes the approach that EPA will use for identifying and categorizing pesticide chemicals that have common mechanisms of toxicity for purposes of assessing the cumulative toxic effects of such pesticides. Specifically, the proposed guidance document describes:

- EPA's interpretation of common mechanism of toxicity with respect to making a determination of safety under FFDCA as amended by FQPA.
- The specific steps that need to be taken for identifying, inferring, or refuting a common mechanism of toxicity.
- The types of data (and their sources) that are needed for doing so.
- How these data are to be used in making decisions regarding common mechanisms of toxicity.
- Factors that will be considered when conducting combined risk assessments that characterize whether or not cumulative toxic effects can reasonably be expected to occur following exposure to two or more pesticide substances that are toxic from a common mechanism.

III. Comments

All public comments concerning the background document were presented to the FIFRA Scientific Advisory Panel prior to the March 1997 meeting. The background document and comments were discussed openly at the meeting. Changes recommended by the Panel concerning the background document were fully considered by EPA when finalizing the guidance document. The recommended changes, as well as a summary of the Agency's responses to the changes, are filed in public docket.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number ''OPP–00542'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–00542.'' Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: July 23, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

[FR Doc. 98–21037 Filed 8–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6137–3]

Announcement of Small System Compliance Technology Lists for Existing National Primary Drinking Water Regulations and Findings Concerning Variance Technologies

AGENCY: Environmental Protection Agency.

ACTION: Notice of lists of technologies and upcoming release of guidance and supporting documents.

SUMMARY: The Environmental Protection Agency (EPA) announces the Small System Compliance Technology Lists and the upcoming release of three guidance documents and three supporting documents. These lists, guidance and supporting documents are related to the provisions in the Safe Drinking Water Act (SDWA), as amended in 1996. The three guidance documents are: EPA–815–R–98–001, Small System Compliance Technology List for the Surface Water Treatment Rule and Total Coliform Rule which includes an update of the existing document-EPA 815–R–97–002; EPA–815–R–98–002, Small System Compliance Technology List for the

Non-Microbial Contaminants Regulated Before 1996; EPA–815–R–98–003, Variance Technology Findings for Contaminants Regulated Before 1996. The three supporting documents are: National-Level Affordability Criteria Under the 1996 Amendments to the Safe Drinking Water Act; An Assessment of the Vulnerability of Non-Community Water Systems to SDWA Cost Increases; and Cost Evaluation of Small System Compliance Options: Point-of-Use and Point-of-Entry Treatment Units.

DATES: The lists of technologies are provided with today's notice. The guidance manuals and supporting documents will be released beginning September 15, 1998.

ADDRESSES: Please contact the Safe Drinking Water Hotline, at phone: (800) 426–4791, fax: (703) 285–1101, or by e-mail at <hotline-sdwa@epamail.epa.gov> to request copies of the guidance and supporting documents beginning September 15, 1998. The guidance documents will also be available on the Internet at <www.epa.gov/OGWDW/> after September 15, 1998.

FOR FURTHER INFORMATION CONTACT: For general information about the availability of these guidance and supporting documents, please contact the Safe Drinking Water Hotline, at phone: (800) 426–4791, fax: (703) 285–1101, or by e-mail at: <hotline-sdwa@epamail.epa.gov>. For other information on Technologies for Small Drinking Water Systems please contact Jeffrey Kempic, Phone: (202) 260–9567, Fax: (202) 260–3762 or Tara Cameron, Phone: (202) 260–3702, Fax: (202) 260–3762 at the U.S. Environmental Protection Agency.

SUPPLEMENTARY INFORMATION:

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I. Background
II. Small System Compliance Technology List for the Surface Water Treatment Rule and Total Coliform Rule
III. Small System Compliance Technology List for the Non-Microbial Contaminants Regulated Before 1996
IV. Variance Technology Findings for Contaminants Regulated Before 1996

I. Background

A. Treatment Technologies Under the SDWA

The National Primary Drinking Water Regulations (NPDWRs) promulgated prior to the 1996 SDWA Amendments include both maximum contaminant levels (MCLs) and treatment techniques. For the NPDWRs where an MCL was promulgated, Section 1412(b)(4)(B) of the SDWA required EPA to set the MCL as close to the maximum contaminant level goal as is feasible. For the NPDWRs where a treatment technique was promulgated, Section 1412(b)(7)(A) of the SDWA specified the conditions under which the Administrator can promulgate a treatment technique in lieu of an MCL. In those cases, the Administrator must identify those treatment techniques which, in the Administrator's judgement, would prevent known or anticipated adverse effects on the health of persons to the extent feasible. Section 1412(b)(4)(D) of the SDWA states that ''the term 'feasible' means feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).''

The cost assessments for the feasibility determinations have historically been based upon impacts to regional and large metropolitan water systems serving populations greater than 50,000 persons. This standard was established when the SDWA was enacted in 1974 [H.R. Rep. No. 93–1185 at 118 (1974)] and when the Act was amended in 1986 [132 Cong. Rec. S6287 (May 21, 1986)]. Since large systems served as the basis for the feasibility determinations, the technical and/or cost considerations associated with these technologies often made them inappropriate or unavailable for small water systems. The 1996 amendments to the SDWA specifically require EPA to make small system technology assessments for both existing and future regulations.

B. Small Systems Options: Compliance and Variance Technologies

For the evaluation of technologies, the SDWA identifies three categories of small systems. The categories are defined in Section 1412(b)(4)(E)(ii) and are as follows: public water systems serving (1) a population of 10,000 or fewer but more than 3,300; (2) a population of 3,300 or fewer but more than 500; and (3) a population of 500 or fewer but more than 25. The SDWA directs EPA to make technology assessments for each of these three size categories in all future regulations establishing an MCL or treatment technique. In addition, SDWA identifies two classes of technologies for small systems for future National Primary Drinking Water Regulations (NPDWRs): compliance technologies and variance technologies. A compliance technology may refer to both a technology or other means that is affordable and that achieves compliance with the maximum contaminant level (MCL) and to a technology or other means that satisfies a treatment technique requirement. Possible compliance technologies include packaged or modular systems and point-of-entry (POE) or point-of-use (POU) treatment units [see Section 1412(b)(4)(E)(ii)]. Variance technologies are only specified for those system size/source water quality combinations for which there are no listed compliance technologies [Section 1412(b)(15)(A)]. Thus, the listing of a compliance technology for a size category/source water combination prohibits the listing of variance technologies for that combination. While variance technologies may not achieve compliance with the MCL or treatment technique requirement, they must achieve the maximum reduction or inactivation efficiency that is affordable considering the size of the system and the quality of the source water. Variance technologies must also achieve a level of contaminant reduction that is protective of public health [Section 1412(b)(15)(B)].

There are two mandatory lists of compliance technologies that will be developed for the existing MCL and treatment technique rules. By August 6, 1997, the Administrator was required to list technologies that meet the surface water treatment rule (SWTR) for each of the three size categories [Section 1412(b)(4)(E)(v)]. This deadline was met and the list was published in the **Federal Register** on August 11, 1997. By August 6, 1998, after consultation with the States, the Administrator must issue a list of technologies that achieve compliance with the MCLs or treatment technique requirements for other existing NPDWRs. By August 6, 1998, after consultation with the States, the Administrator must issue, if applicable, guidance or regulations for variance technologies for the existing NPDWRs for which a small system variance can be granted. When variance technologies are listed, EPA must provide any assumptions used in determining affordability, taking into consideration the number of persons served by such systems [Section 1412(b)(15)(C)]. Small system variances are not available for all contaminants [see Section 1415(e)(6)]. When small system variances are not available under the SDWA, variance technologies will not be listed.

Although the statute is silent concerning whether small system compliance technologies for existing regulations should be affordable, EPA believes that the better approach under the statute is that affordability should be evaluated for future regulations and

existing regulations where the statute allows variance technologies. If the candidate technologies are not evaluated against an affordable technology criterion, then compliance technologies would exist for all of the existing regulations regardless of the source water quality. The existing best available technologies (BATs) or treatment techniques would become the compliance technologies for small systems, which was the case prior to the 1996 Amendments. EPA does not believe that result to be what Congress intended. As a result, EPA will evaluate small system technologies against an affordable technology criterion for those existing regulations where small system variances or variance technologies are not prohibited by the SDWA. When affordable compliance technologies are identified for these contaminants, technologies that can achieve compliance but did not meet the affordability criterion will also be identified. This is consistent with EPA's approach to the compliance technology list for the SWTR and the views of stakeholders. EPA will list these technologies and indicate that they did not pass the affordable technology criterion rather than limit the information on options available to systems. For those regulations where the SDWA prohibits small system variances or variance technologies, affordability will not be considered in the evaluation of compliance technologies because there would be no function to doing so (all systems subject to the rule must comply).

All of the 80 currently regulated contaminants were considered in forming the compliance technology lists. Compliance technologies have not been listed for aldicarb, aldicarb sulfoxide, aldicarb sulfone, and nickel since the NPDWRs for these contaminants are not in effect. All of the 80 currently regulated contaminants either have affordable compliance technologies or are not eligible for variance technologies because of prohibitions in the SDWA. Thus, there are no variance technologies listed for the currently regulated contaminants in this listing. The rationale for not listing any variance technologies is described in Section IV. Section IV also contains a discussion on EPA's perspective regarding future revisions to these listings.

The SDWA, as amended, does not specify the format for the compliance technology lists. Section 1412(b)(15)(D) does state that the variance technology lists can be issued either through guidance or regulations. Moreover, the lists provided in today's notice are informational and interpretive and do not require changes to the associated National Primary Drinking Water Regulations. Thus, EPA believes the compliance technology lists issued today are appropriately provided through this notice and the referenced guidance documents rather than through rulemaking.

C. Small System Compliance Technology Lists and Product-Specificity

The small system compliance lists will not be product-specific since EPA's Office of Ground Water and Drinking Water does not have the resources to review each product for each potential application, nor does EPA feel it would be appropriate to do so. However, information on specific products may soon be available through another mechanism. The EPA Office of Research and Development has a pilot project under the Environmental Technology Verification (ETV) Program to provide technology purchasers with performance data generated by independent third parties. The EPA and National Sanitation Foundation (NSF) International are cooperatively organizing and conducting this pilot project in part to address the needs of community water systems for verification testing of packaged drinking water treatment systems. The ETV pilot project includes development of verification protocols and test plans, independent testing and validation of packaged equipment, government/industry partnerships to obtain credible cost and performance data, and preparation of product verification reports for wide-spread dissemination.

II. Update to the Small System Compliance Technology List for the Surface Water Treatment Rule and Total Coliform Rule

A. Small System Compliance Technology List for the Surface Water Treatment Rule (SWTR)

A1. Overview

The Small System Compliance Technology List for the SWTR was published in the **Federal Register** on August 11, 1997 (62 Fed. Reg., 42987). The August 1997 notice announced that the SWTR list would be updated in 1998. This notice provides this update to the SWTR list and announces the upcoming release of the updated supporting guidance document.

A2. Description of Updated SWTR List

This update contains information on applicability ranges and other issues that a water system should consider prior to selecting a disinfection or filtration technology. The level of detail that is provided concerning these factors was discussed at a public meeting concerning technologies for small drinking water systems held on May 18 and 19, 1998 in Washington, D.C. Additional information that is incorporated into this list of compliance technologies includes: (1) influent water quality range and considerations; (2) an evaluation of microbial (Giardia and viruses) log removal credits for technologies not originally listed in the SWTR; and (3) additional technical limitations. The guidance manual contains information on operation and maintenance requirements, waste disposal, potential disinfection by-products and other technical concerns related to finished water quality.

EPA has revised the listing for one of the disinfection technologies on the 1997 list. EPA has recharacterized ''mixed oxidant disinfection'' as ''on-site oxidant generation'' in the 1998 compliance technology list for the SWTR. In this process, an electric current is passed through a continuous-flow brine (salt) solution within a cell. After dilution, the electrolyzed brine solution containing the concentrated disinfectant is injected into the water for treatment. Recent research has not determined that additional oxidants other than free chlorine are produced to a significant degree by this process. The guidance manual contains additional detail on the recharacterization of this technology.

EPA also evaluated several new or ''emerging'' disinfection and filtration technologies that merit consideration for small system application. The disinfection technologies that were evaluated were: advanced oxidation or ''perozone'' (the combined use of ozone and hydrogen peroxide), pulsed ultraviolet radiation (UV), and ultraviolet oxidation (the combined use of UV and chemical oxidants). EPA has determined that these technologies should still be classified as ''emerging technologies'' due to (1) lack of data on microorganism inactivation rates and (2) insufficient data regarding their performance in small systems. EPA will further evaluate these technologies as information becomes available for possible inclusion in a future update to the compliance technology list for the SWTR. The guidance manual contains a more detailed discussion of the data needs for these technologies. Backwashable depth filters was the one form of filtration technology that was evaluated. Backwashable depth filters were found viable for small systems and

were added to the compliance technology list for the SWTR.

EPA is not listing point-of-use (POU) and point-of-entry (POE) devices as compliance technologies for the SWTR. The 1996 SDWA specifically prohibits POU devices as compliance technologies for microbial contaminants [Section 1412(b)(4)(E)(ii)]. While POE devices are not prohibited, there are several difficulties that would need to be overcome and questions answered before POE devices could be considered as viable treatment options for microbial contaminants. For instance, how would disinfection be applied? The National Research Council, a principal operating agency of the National Academy of Sciences, advises that POE devices not be used for disinfection purposes since ''control of acute disease should be accomplished with the highest feasible degree of competence.'' (National Research Council. *Safe Water From Every Tap: Improving Water Service to Small Communities*. National Academy Press. Washington, D.C. 1997.) Since disinfection following filtration is considered good engineering practice, the absence of disinfection following POE filtration devices presents an obstacle to the use of these devices for these purposes. Finally, if POE devices were used in spite of such considerations, what would be the required monitoring frequency? Since microbial contaminants pose potential acute health threats, monitoring requirements would necessarily be extensive. In light of this difficulty, monitoring requirements alone may make POE devices inapplicable as small systems technologies for SWTR compliance.

Future lists may be expanded to include additional technologies as current performance informational deficiencies are addressed. The SWTR small system compliance technology list will continue to evolve over time as updates are published.

B. Compliance Technologies for the Total Coliform Rule (TCR)

EPA promulgated the TCR in June 1989. The TCR contains a listing of ''best technologies, treatment techniques, or other means available for achieving compliance with the maximum contaminant level (MCL) for total coliforms'' [40 CFR § 141.63 (d)]. At the time these techniques were codified, no specific notation as to applicability to categories of public water system size was included. However, as discussed above, with passage of the Safe Drinking Water Act Amendments of 1996, EPA is to specify compliance technologies for three small water system size categories, defined by the Act as those serving 10,000–3,301 persons; 3,300–501 persons; and 500–25 persons.

EPA presented stakeholders with a proposed TCR compliance technology list at the May 1998 meeting. This proposed listing was essentially the same as the means of compliance listed in the final TCR. EPA has received no substantive comments on the listing or technical information that would warrant a substantive change to the means of compliance specified in 1989. Therefore, the Agency is listing the same treatment techniques and other means for small systems compliance as were codified in the 1989 rule. Under SDWA, variances are not allowed for regulations that control microbiological contamination; thus there are no variance technologies for this rule.

C. Availability of a Guidance Document Regarding This List

This list is supported by the updated guidance document entitled ''Small System Compliance Technology List for the Surface Water Treatment Rule and Total Coliform Rule'' that will be released on September 15, 1998. The guidance document is organized into several chapters describing the listed small system compliance technologies for the SWTR and TCR. Chapter 1 discusses the requirements of the 1996 amendments to the SDWA and the approach EPA followed to meet those requirements. Chapter 2 discusses the list of technologies that were evaluated for the compliance technology list. Chapter 3 discusses the compliance technologies for the Total Coliform Rule. Chapter 4 discusses emerging technologies and issues for further considerations.

D. May 18–19, 1998 Stakeholder Meeting

EPA held a stakeholder meeting on May 18 and 19, 1998. The meeting took place at RESOLVE, 1255 23rd Street, N.W., Washington, D.C. Approximately 50 people registered and participated at the meeting. Stakeholders included representatives from public water utilities, state regulatory agencies, public interest groups, the public health community, research community, equipment manufacturers and other related industries. At the meeting, EPA presented the proposed draft 1998 listings for the SWTR and TCR to stakeholders. The main discussions centered on EPA's tabulations of listed and ''emerging'' technologies for the SWTR, and to a lesser extent on TCR technologies. The tables provided detailed information as researched by EPA on the following subject areas: treatment efficacy, including ranges of microbial inactivation; treatment complexity and operator skill levels required; byproducts formed (both chemical and physical byproducts of treatment); raw water quality concerns; and other important limitations of the listed treatments. Stakeholder discussions were fruitful and resulted in several proposed changes to EPA's draft listing. Proposed changes included the following:

- Stakeholders suggested that EPA group several of the ''emerging'' technologies into the ''advanced oxidation'' heading; and, that modifications to traditional ultraviolet radiation be grouped together as ''advanced ultraviolet'' treatment.
- Stakeholders generally agreed with EPA that the above-referenced advanced treatments should still be considered ''emerging'' due to some gaps in information, such as the lack of availability of treatment efficacy data and/or operational data in a small systems or drinking water setting. It was also noted that the above-cited EPA/NSF verification program may provide results on the testing of some of the disinfection technologies later in the year, which may be reviewed prior to the next listing for the subject microbial regulations.
- EPA was advised to include the caveat that bag filters should be handled carefully due to the fragility of the materials, and that seals on cartridge filters can be damaged and require special attention.
- EPA was advised that, in reference to bag and cartridge filtration, it would not be advisable to specify maximum raw water turbidity levels (i.e., the 2 to 3 nephelometric turbidity units (NTU) cited). Such limits may be more a function of pretreatment and system economy, and that levels up to 10–30 NTU have been treated successfully.
- EPA was advised that many U.S. small drinking water systems are currently using ozonation for primary disinfection and that the International Ozone Association has recently compiled and presented operational case study data (a tabulated listing and presentation by R. Rice at the May 1998 NSF/WHO/PAHO Small Systems Symposium were provided to EPA); however, it is generally believed that ''advanced'' combinations involving ozone have yet to be demonstrated for small systems and that they may in fact not be practical for small systems. Ozone representatives also pointed out that previously cited cleaning problems have been largely overcome in the past 5 years due to use of pure oxygen feeds

(in lieu of air feed) in the newer ozone generators.

- Many stakeholders have indicated that an annual update to the SWTR listing of technologies would be appropriate in order to capture any developments in the treatment technology field.
- No specific changes or substantive comments were received relative to the proposed TCR listing of compliance technologies,.

This 1998 list and the supporting guidance document reflect the input from stakeholders.

E. List of Compliance Technologies for the SWTR and TCR

The following tables contain the 1998 list of compliance technologies for the SWTR and the TCR for the three small system size categories. A more detailed description of each technology can be found in the guidance document. The three population size categories of small public water systems as defined in the SDWA are those serving: 10,000–3,301 persons, 3,300–501 persons, and 500–25 persons. The technologies are listed for all three size categories; however, systems should examine the ''Limitations'' column before selecting a technology. This column contains information that could limit the applicability of the technology for some systems within a size category or categories. Water treatment plant operator skill requirements vary with each piece of unit technology. The tables for filtration and disinfection technologies include a skill level for each technology ranging from basic to advanced. For a piece of unit technology that requires ''basic operator skill'', an operator with minimal experience in the water treatment field can perform the necessary system operation and monitoring if provided with written instruction. ''Intermediate operator skill'' implies that the operator understands the principles of water treatment and has a knowledge of the regulatory framework. ''Advanced operator skill'' implies that the operator possesses a thorough understanding of the principles of system operation, including water treatment and regulatory requirements. The ''operator skill level required'' column in the tables refers to the skill level needed for the unit technology. If pretreatment is required, the required operator skill levels will likely increase.

These lists will be updated in August 1999 if new information becomes available. The updated list would include new technologies or additional information on existing technologies. A description of each technology can be found in the guidance document. The water quality issues and technology limitations noted for the technologies in this notice are general limitations. The guidance manual contains site-specific limitations and water quality issues that systems should consider before selecting a treatment technology. The guidance manual also contains additional information on the by-products produced by the disinfection technologies and the waste generated by filtration processes.

TABLE 1.—SWTR COMPLIANCE TECHNOLOGY TABLE: DISINFECTION

Unit technology	Limitations (see footnotes)	Operator skill Level Required	Raw water quality range and considerations	Removals: Log Giardia & Log Virus w/ CT's indicated in () [1]
Free Chlorine	[a, b]	Basic	Better with high quality. High iron or manganese may require sequestration or physical removal.	3 log (104) & 4 log (6).
Ozone	[c, d]	Intermediate	Better with high quality. High iron or manganese may require sequestration or physical removal.	3 log (1.43) & 4 log (1.0).
Chloramines	[e]	Intermediate	Better with high quality. Ammonia dose should be tempered by natural ammonia levels in water.	3 log (1850) & 4 log (1491).
Chlorine Dioxide	[f]	Intermediate	Better with high quality	3 log (23) & 4 log (25).
On-Site Oxidant Generation.	[g]	Basic	Better with high quality	Research pending on CT values. Use free chlorine.
Ultraviolet Radiation	[h]	Basic	Relatively clean source water required. Iron, natural organic matter and turbidity affect UV dose.	1 log Giardia (80–120) & 4 log viruses (90–140) mWsec/cm2 doses in parentheses [2].

[1] CT (Concentration x Time), in mg-min/L, based upon 1989 Surface Water Treatment Rule Guidance Manual. Temp. 10 C, mid-pH range, unless otherwise indicated.

[2] UV dose is product of mW/cm2 (intensity) x sec (time); bases of viral inactivation ranges are rotavirus and MS–2 tests .

Limitations Footnotes to Table 1: SWTR Compliance Technology Table: Disinfection

[a] Providing adequate CT (time /storage) may be a problem for some supplies.

[b] Chlorine gas requires special caution in handling and storage, and operator training.

[c] Ozone leaks represent hazard: air monitoring required.

[d] Ozone used as primary disinfectant (i.e., no residual protection).

[e] Long CT. Requires care in monitoring of ratio of added chlorine to ammonia.

[f] Chlorine dioxide requires special storage and handling precautions.

[g] Oxidants other than chlorine not detected in solution by significant research effort. CT should be based on free chlorine until new research determines appropriate CT values for electrolyzed salt brine.

[h] No disinfectant residual protection for distributed water.

TABLE 2.—SWTR COMPLIANCE TECHNOLOGY TABLE: FILTRATION

Unit technology	Limitations (see footnotes)	Operator skill level required	Raw water quality range and considerations	Removals: Log Giardia & Log Virus
Conventional Filtration (includes dual-stage and dissolved air flotation).	[a]	Advanced	Wide range of water quality. DAF more applicable for removing particulate matter that doesn't readily settle: algae, high color, low turbidity (up to 30–50 NTU) and low-density turbidity.	2–3 log Giardia & 1 log viruses.

TABLE 2.—SWTR COMPLIANCE TECHNOLOGY TABLE: FILTRATION—Continued

Unit technology	Limitations (see footnotes)	Operator skill level required	Raw water quality range and considerations	Removals: Log Giardia & Log Virus
Direct Filtration (includes in-line filtration).	([a])	Advanced	High quality. Suggested limits: average turbidity 10 NTU; maximum turbidity 20 NTU; 40 color units; algae on a case-by-case basis.[1].	0.5 log Giardia & 1–2 log viruses (1.5–2 log Giard. w/coagulation).
Slow Sand Filtration	([b])	Basic	Very high quality or pre-treatment. Pre-treatment required if raw water is high in turbidity, color, and/or algae.	4 log Giardia & 1–6 log viruses.
Diatomaceous Earth Filtration.	([c])	Intermediate	Very high quality or pre-treatment. Pre-treatment required if raw water is high in turbidity, color, and/or algae.	''Very effective'' for Giardia; low bacteria and virus removal.
Reverse Osmosis	([d, e, f])	Advanced	Requires pre-filtrations for surface water—may include removal of turbidity, iron, and/or manganese. Hardness and dissolved solids may also affect performance.	Very effective (cyst and viruses).
Nanofiltration	([e])	Intermediate	Very high quality of pre-treatment. See reverse osmosis pre-treatment.	Very effective (cyst and viruses).
Ultrafiltration	([g])	Basic	High quality or pre-treatment	Very effective Giardia, >5–6.
Microfiltration	([g])	Basic	High quality or pre-treatment required	Very effective Giardia, >5–6 log; Partial removal viruses.
Bag Filtration	([g, h, i])	Basic	Very high quality or pre-treatment required, due to low particulate loading capacity. Pre-treatment if high turbidity or algae.	Variable Giardia removals & Disinfection required for virus credit.
Cartridge Filtration	([g, h, i])	Basic	Very high quality or pre-treatment required, due to low particulate loading capacity. Pre-treatment if high turbidity or algae.	Variable Giardia removals & Disinfection required for virus credit.
Backwashable Depth Filtration.[3].	([g, h, i])	Basic	Very high quality or pre-treatment required, due to low particulate loading capacity. Pre-treatment if high turbidity or algae.	Variable Giardia removals & Disinfection required for virus credit.

[1] National Research Council, Committee on Small Water Supply Systems. ''Safe Water From Every Tap: Improving Water Service to Small Communities.'' National Academy Press, Washington, D.C. 1997.

[2] Adham, S.S., Jacangelo, J.G., and Laine, J.M. ''Characteristics and Costs of MF and UF Plants.'' *Journal American Water Works Association*, May 1996.

[3] New technology added by this notice.

Limitations Footnotes to Table 2: SWTR Compliance Technology Table: Filtration

[a] Involves coagulation. Coagulation chemistry requires advanced operator skill and extensive monitoring. A system needs to have direct full-time access or full-time remote access to a skilled operator to use this technology properly.

[b] Water service interruptions can occur during the periodic filter-to-waste cycle, which can last from six hours to two weeks.

[c] Filter cake should be discarded if filtration is interrupted. For this reason, intermittent use is not practical. Recycling the filtered water can remove this potential problem.

[d] Blending (combining treated water with untreated raw water) cannot be practiced at risk of increasing microbial concentrations in finished water.

[e] Post-disinfection recommended as a safety measure and for residual maintenance.

[f] Post-treatment corrosion control will be needed prior to distribution.

[g] Disinfection required for viral inactivation.

[h] Site-specific pilot testing prior to installation likely to be needed to ensure adequate performance.

[i] Technologies may be more applicable to system serving fewer than 3,300 people.

TABLE 3.—COMPLIANCE TECHNOLOGY TABLE FOR THE TOTAL COLIFORM RULE

40 CFR § 141.63(d)—Best technologies or other means to comply (Complexity level indicated)	Comments/Water quality concerns
Protection of wells from contamination, i.e., placement and construction of well(s) (Basic).	Ten States Standards and other standards (AWWA A100–90) apply; interfacing with other programs essential (e.g., source water protection program).
Maintenance of a disinfection residual for distribution system protection (Intermediate).	Source water constituents may affect disinfection: iron, manganese, organics, ammonia, other factors may affect dosage and water quality. TCR remains unspecific on type/amount of disinfectant, as each type differs in concentration, time, temperature, pH, interaction with other constituents, etc.
Proper maintenance of distribution system: pipe repair/replacement, main flushing programs, storage/reservoir and O&M programs (including cross-connection control/ backflow prevention), and maintenance of positive pressure throughout (Intermediate).	O&M programs particularly important for smaller systems needing to maintain water purity. States may vary on distribution protection measures. See also EPA's Cross-Connection Control Manual (# EPA 570/9–89–007).

TABLE 3.—COMPLIANCE TECHNOLOGY TABLE FOR THE TOTAL COLIFORM RULE—Continued

40 CFR § 141.63(d)—Best technologies or other means to comply (Complexity level indicated)	Comments/Water quality concerns
Filtration and/or Disinfection of surface water or other groundwater under direct influence; or disinfection of groundwater (Basic thru Advanced).	Same issues as cited above under maintaining disinfection residual; pretreatment requirements affect complexity of operation. Refer to SWTR Compliance Technology List; and other regulations under development.
Groundwaters: Compliance with State Well-Head Protection Program (Intermediate).	EPA/State WHPP implementation (per § 1428 SDWA): may be used to assess vulnerability to contamination, and in determination of sampling and sanitary survey frequencies.

III. Small System Compliance Technology Lists for the Non-Microbial Contaminants Regulated Before 1996

A. Overview

This notice announces the Small System Compliance Technology List for the non-microbial contaminants regulated before 1996. The list is divided by contaminant type into lists for inorganics (IOCs), volatile organic compounds (VOCs), pesticides and other synthetic organic compounds (SOCs), and radionuclides. Technologies for the removal of these contaminants were evaluated for performance and applicability to small systems. Criteria for evaluation included availability of published performance assessments, general limitations to use by the various small systems size categories, raw water quality requirements, and required operator skill level.

There is one noteworthy group of technologies included on the compliance technology lists for IOCs, SOCs, and radionuclides. Point-of-use (POU) devices have been identified as compliance technologies. Section 1412(b)(4)(E)(ii) of the SDWA identifies POU treatment units as an option for compliance technologies. This section also identifies Point-of-Entry (POE) devices as a compliance technology option. Section 1412(b)(4)(E)(ii) stipulates that ''point-of-entry and point-of-use treatment units shall be owned, controlled, and maintained by the public water system or by a person under contract with the public water system to ensure proper operation and maintenance and compliance with the MCL or treatment technique and equipped with mechanical warnings to ensure that customers are automatically notified of operational problems.'' Other conditions in this section of the SDWA include: ''If the American National Standards Institute has issued product standards applicable to a specific type of POE or POU treatment unit, individual units of that type shall not be accepted for compliance with a MCL or treatment technique unless they are independently certified in accordance with such standards.''

In order to list POU treatment units as compliance technologies, EPA had to delete the part of 40 CFR 141.101 that prohibited POU devices to be used to comply with an MCL. A final rule was published in the **Federal Register** on June 11, 1998 deleting the prohibition on the use of POU devices as compliance technologies. As previously mentioned, POU devices are listed as compliance technologies for IOCs, SOCs, and radionuclides. POU devices are not listed for VOCs because they do not address all routes of exposure. POE devices are still considered emerging technologies because of waste disposal and cost considerations. POE devices may be included on an updated list in 1999. For more detail on POU and POE devices, see the guidance manual entitled ''Compliance Technology List for Non-Microbial Contaminants Regulated Before 1996'' and the supporting document entitled ''Cost Evaluation of Small System Compliance Options: Point-of-Use and Point-of-Entry Treatment Units.''

Technologies for which sufficient information exists for evaluations are listed as compliance technologies. Those for which incomplete information exists, but which appear promising enough to be further evaluated, are listed as ''emerging technologies.'' Emerging technologies are only included in the guidance manuals. These compliance technology lists will be updated in 1999 if new information becomes available. The updated lists will provide further information on the listed compliance technology lists and may include additional technologies. In general, all of the compliance technology lists will continue to evolve over time as information is made available and as updates are published.

B. Availability of a Guidance Document

The guidance document supporting these lists is entitled ''Small System Compliance Technology List for the Non-Microbial Contaminants Regulated Before 1996.'' The document may be obtained from EPA by calling the Safe Drinking Water Hotline at (800) 426–4791 after September 15, 1998. It is also accessible via the Internet at <www.epa.gov/OGWDW/Pubs/index.html> after September 15, 1998.

The guidance document is divided into chapters describing the SDWA requirements concerning the list, the technologies being evaluated, along with the criteria and other information necessary for evaluation, the annotated list of technologies chosen as compliance technologies, and the annotated list of technologies that require further evaluation. EPA expects to update this guidance document in 1999.

C. Compliance Technology List for the Non-Microbial Contaminants Regulated Before 1996

The following tables contain the initial list of compliance technologies for the three small system size categories for the non-microbial contaminants regulated before 1996: Inorganic contaminants (IOCs), volatile organic contaminants (VOCs), synthetic organic contaminants (SOCs), and radionuclides. A discussion of each technology can be found in the guidance document along with a more detailed analysis of technology limitations.

C1. Compliance Technologies for Inorganic Contaminants (IOCs)

Table 4 contains the technologies that have been identified as compliance technologies for at least one IOC. The table contains the same structure as other tables with a list of limitations that are contained in the footnotes and operator skill level and raw water quality issues for general operation of the technology. The guidance manual will have more detailed information on the application of the technologies for particular contaminants.

TABLE 4.—TECHNOLOGIES FOR IOCS

Unit technology	Limitations (see footnotes)	Operator skill level required	Raw water quality range
1. Activated Alumina	([a])	Advanced	Ground waters, Competing anion concentrations will affect run length.
2. Ion Exchange (IX)		Intermediate	Ground waters with low total dissolved solids, Competing ion concentrations will affect run length.
3. Lime Softening	([b])	Advanced	Hard ground and surface waters.
4. Coagulation/Filtration	([c])	Advanced	Can treat wide range of water quality.
5. Reverse Osmosis (RO)	([d])	Advanced	Surface water usually require pre-filtration.
6. Alkaline Chlorination	([e])	Basic	All ground waters.
7. Ozone Oxidation		Intermediate	All ground waters.
8. Direct Filtration		Advanced	Needs high raw water quality.
9. Diatomaceous earth filtration.		Intermediate	Needs very high raw water quality.
10. Granular Activated Carbon.		Basic	Surface waters may require prefiltration.
11. Electrodialysis Reversal		Advanced	Requires prefiltration for surface water.
12. POU—IX	([f])	Basic	Same as Technology #2.
13. POU—RO	([f])	Basic	Same as Technology #5.
14. Calcium Carbonate Precipitation.	([g])	Basic	Waters with high levels of alkalinity and calcium.
15. pH and alkalinity adjustment (chemical feed).	([g])	Basic	All ranges.
16. pH and alkalinity adjustment (limestone contactor).	([h])	Basic	Waters that are low in iron and turbidity. Raw water should be soft and slightly acidic.
17. Inhibitors		Basic	All ranges.
18. Aeration	([i])	Basic	Waters with moderate to high carbon dioxide content.

Limitations Footnotes to the Technology Tables for IOCs

[a] Chemicals required during regeneration and pH adjustment may be difficult for small systems to handle.
[b] Softening chemistry may be too complex for small systems.
[c] It may not be advisable to install coagulation/filtration solely for inorganics removal.
[d] If all of the influent water is treated, post-treatment corrosion control will be necessary.
[e] pH must exceed pH 8.5 to ensure complete oxidation without build-up of cyanogen chloride.
[f] When POU devices are used for compliance, programs for long-term operation, maintenance, and monitoring must be provided by water utility to ensure proper performance (see Section III.A of this notice).
[g] Some chemical feeds require high degree of operator attention to avoid plugging.
[h] This technology is recommended primarily for the smallest size category.
[i] Any of the first five aeration technologies listed for volatile organic contaminants can be used.

The background section indicated that EPA would identify affordable compliance technologies for those existing regulations where small system variances or variance technologies are not prohibited by the SDWA. There are statutory prohibitions against small system variances or variance technologies for 13 of the 17 IOCs. Table 5 contains the compliance technologies for the four IOCs where affordability was considered. Affordability only plays a role in removing some of the options in the smallest size category. The technology costs are based on treatment of all of the water. The technologies that did not meet the affordability criteria in the smallest size category are also identified in the next column called other compliance technologies. These technologies may be affordable if the concentration of the contaminant is low enough that a portion of the influent stream can be treated and blended with an untreated portion to still meet the MCL. Systems and States should consider these options under those circumstances. Table 6 contains the compliance technologies for the remaining thirteen IOCs where affordability was not considered due to statutory prohibitions. The statutory prohibitions on variance technologies and small system variances are discussed in detail in Section IV of this notice.

TABLE 5.—COMPLIANCE TECHNOLOGIES BY SYSTEM SIZE CATEGORY FOR THOSE IOC NPDWRS WHERE AFFORDABILITY IS CONSIDERED

Inorganic Contaminant	Compliance Technologies for System Size Categories (Population Served)			
	25–500 (afford)	25–500 (other)	501–3,300 (afford)	3,301–10,000 (afford)
Antimony	13	4, 5	4, 5, 13	4, 5, 13.
Asbestos	8, 9, 15, 17	4	4, 8, 9, 15, 17	4, 8, 9, 15, 17.
Cyanide	2, 6, 7	5	2, 5, 6, 7	2, 5, 6, 7.
Lead	2, 12, 13, 14, 15, 16, 17, 18.	3, 4, 5	2, 3, 4, 5, 12, 13, 14, 15, 16, 17, 18.	2, 3, 4, 5, 12, 13, 14, 15, 16, 17, 18.

TABLE 6.—COMPLIANCE TECHNOLOGIES BY SYSTEM SIZE CATEGORY FOR THOSE IOC NPDWRS WHERE AFFORDABILITY IS NOT CONSIDERED

Inorganic contaminant	Compliance technologies for system size categories (Population served)		
	25–500	501–3,300	3,301–10,000
Arsenic	1, 2, 3, 4, 5, 11, 12, 13	1, 2, 3, 4, 5, 11, 12, 13	1, 2, 3, 4, 5, 11, 12, 13.
Barium	2, 3, 4, 5, 11, 12, 13	2, 3, 4, 5, 11, 12, 13	2, 3, 4, 5, 11, 12, 13.
Beryllium	1, 2, 3, 4, 5, 12, 13	1, 2, 3, 4, 5, 12, 13	1, 2, 3, 4, 5, 12, 13.
Cadmium	2, 3, 4, 5, 12, 13	2, 3, 4, 5, 12, 13	2, 3, 4, 5, 12, 13.
Chromium	2, 3,[a] 4, 5, 12, 13	2, 3,[a] 4, 5, 12, 13	2, 3,[a] 4, 5, 12, 13.
Copper	2, 3, 4, 5, 12, 13, 15, 16, 17, 18	2, 3, 4, 5, 12, 13, 15, 16, 17, 18	2, 3, 4, 5, 12, 13, 15, 16, 17, 18.
Fluoride	1, 5, 13	1, 5, 13	1, 5, 13.
Mercury	3,[b] 4,[b] 5,[b] 10	3,[b] 4,[b] 5,[b] 10	3,[b] 4,[b] 5,[b] 10.
Nitrate	2, 5, 11	2, 5, 11	2, 5, 11.
Nitrite	2, 5	2, 5	2, 5.
Nitrate + Nitrite	2, 5, 11	2, 5, 11	2, 5, 11.
Selenium	1, 2,[c] 3, 4,[d] 5, 11,[d] 13	1, 2,[c] 3, 4,[d] 5, 11,[d] 13	1, 2,[c] 3, 4,[d] 5, 11,[d] 13.
Thallium	1, 2, 12	1, 2, 12	1, 2, 12.

Footnotes for Table 6: Compliance Technologies for IOCs (affordability not considered)

[a] Compliance technology for Chromium III only.

[b] Compliance technologies only when influent mercury concentrations ≤ 10 μg/L.

[c] Compliance technology for Selenium VI only.

[d] Compliance technology for Selenium IV only.

C2. Compliance Technologies for Volatile Organic Contaminants (VOCs)

Table 7 contains the technologies that have been identified as compliance technologies for at least one VOC. The table contains the same structure as other tables with a list of limitations that are contained in the footnotes and operator skill level and raw water quality issues.

TABLE 7.—TECHNOLOGIES FOR VOCS

Unit technology	Limitations (see footnotes)	Operator skill level required [1]	Raw water quality range [1]
1. Packed Tower Aeration (PTA)	([a])	Intermediate	All ground waters.
2. Diffused Aeration	([a b])	Basic	All ground waters.
3. Multi-Stage Bubble Aerators	([a c])	Basic	All ground waters.
4. Tray Aeration	([a d])	Basic	All ground waters.
5. Shallow Tray Aeration	([a e])	Basic	All ground waters.
6. Spray Aeration	([a f])	Basic	All ground waters.
7. Mechanical Aeration	([a g])	Basic	All ground waters.
8. Granular Activated Carbon (GAC).	([h])	Basic	All ground waters.

[1] National Research Council (NRC). Safe Water from Every Tap: Improving Water Service to Small Communities. National Academy Press. Washington, DC. 1997.

Limitations Footnotes to the Technology Tables for VOCs

[a] Pretreatment for the removal of microorganisms, iron, manganese, and excessive particulate matter may be needed. Post-treatment disinfection may have to be used.

[b] May not be as efficient as other aeration methods because it does not provide for convective movement of the water thus limiting air-water contact. It is generally used only to adapt existing plant equipment.

[c] These units are highly efficient, however the efficiency depends upon the air-to-water ratio.

[d] Costs may increase if a forced draft is used. Slime and algae growth can be a problem, but can be controlled with chemicals such as copper sulfate or chlorine.

[e] These units require high air/water ratios (100–900 m^3/m^3)

[f] For use only when low removal levels are needed to reach an MCL because these systems may not be as energy efficient as other aeration methods because of the contacting system.

[g] For use only when low removal levels are needed to reach an MCL because these systems may not be as energy efficient as other aeration methods because of the contacting system. The units often require large basins, long residence times, and high energy inputs which may increase costs.

[h] See the SOCs compliance technology table for limitation regarding these technologies.

The background section indicated that EPA would identify affordable compliance technologies for those existing regulations where small system variances or variance technologies are not prohibited by the SDWA. There are statutory prohibitions against small system variances or variance technologies for 2 of the 21 VOCs. Table 8 contains the compliance technologies for the 19 VOCs where affordability was considered. Affordability only plays a role in removing options in the smallest size category. The technology costs are based on treatment of all of the water. The technologies that did not meet the affordability criteria in the smallest size category are also identified in the next column called ''other compliance technologies.'' These technologies may be affordable if the concentration of the contaminant is low enough that a portion of the influent stream can be treated and blended with an untreated portion to still meet the MCL. This blending would reduce both the capital and operating and maintenance costs of the process. Systems and States should consider these options under those circumstances. Table 9 contains the compliance technologies for the remaining two VOCs where affordability was not considered due to statutory prohibitions. The statutory prohibitions on variance technologies and small system variances are discussed in detail in Section IV of this notice.

TABLE 8.—COMPLIANCE TECHNOLOGIES BY SYSTEM SIZE CATEGORY FOR THOSE VOC NPDWRS WHERE AFFORDABILITY IS CONSIDERED

Volatile organic contaminant	Compliance technologies for system size categories (Population served)			
	25–500 (afford)	25–500 (other)	501–3,300 (afford)	3,301–10,000 (afford)
Benzene	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
Carbon Tetrachloride	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
Chlorobenzene	1, 2, 3, 4, 5, 6, 7	8	1, 2, 3, 4, 5, 6, 7, 8	1, 2, 3, 4, 5, 6, 7, 8.
cis-1,2-Dichlorobenzene	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
1,2-Dichloroethane	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
1,1-Dichloroethylene	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
Dichloromethane	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
1,2-Dichloropropane	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
Ethylbenzene	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
o-Dichlorobenzene	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
p-Dichlorobenzene	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
Tetrachloroethylene	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
Toluene	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
trans-1,2-Dichloroethylene	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
1,2,4-Trichlorobenzene	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
1,1,1-Trichloroethane	1, 2, 3, 4, 5, 6	8	1, 2, 3, 4, 5, 6, 8	1, 2, 3, 4, 5, 6, 8.
1,1,2-Trichloroethane	1, 2, 3, 4, 5,	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
Trichloroethylene	1, 2, 3, 4, 5, 6, 7	8	1, 2, 3, 4, 5, 6, 7, 8	1, 2, 3, 4, 5, 6, 7, 8.
Xylenes (total)	1, 2, 3, 4, 5	8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.

TABLE 9.—COMPLIANCE TECHNOLOGIES BY SYSTEM SIZE CATEGORY FOR THOSE VOC NPDWRS WHERE AFFORDABILITY IS NOT CONSIDERED

Volatile organic contaminant	Compliance technologies for system size categories (Population served)		
	25–500	501–3,300	3,301–10,000
Styrene	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.
Vinyl Chloride	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8	1, 2, 3, 4, 5, 8.

C3. Compliance Technologies for SOCs (Pesticides and Other SOCs).

Table 10 contains the technologies that have been identified as compliance technologies for at least one SOC. The table contains the same structure as other tables with a list of limitations that are contained in the footnotes and operator skill level and raw water quality issues.

TABLE 10.—TECHNOLOGIES FOR SOCS

Unit technology	Limitations (see footnotes)	Operator skill level required [1]	Raw water quality range and considerations [1]
1. Granular Activated Carbon (GAC).		Basic	Surface water may require pre-filtration.
2. Point of Use (POU) GAC	(a)	Basic	Surface water may require pre-filtration.
3. Powdered Activated Carbon	(b)	Intermediate	All waters.
4. Chlorination	(c)	Basic	Better with high quality water.
5. Ozonation	(c)	Basic	Better with high quality waters.
6. Packed Tower Aeration (PTA)	(d)	Intermediate	All ground waters.
7. Diffused Aeration	(d, e)	Basic	All ground waters.
8. Multi-Stage Bubble Aerators	(d f)	Basic	All ground waters.
9. Tray Aeration	(d g)	Basic	All ground waters.
10. Shallow Tray Aeration	(d f)	Basic	All ground waters.

[1] National Research Council (NRC). Safe Water from Every Tap: Improving Water Service to Small Communities. National Academy Press. Washington, DC. 1997.

Limitations footnotes for Table 10: Technologies for SOCs

[a] When POU devices are used for compliance, programs for long-term operation, maintenance, and monitoring must be provided by water utility to ensure proper performance (see Section III.A of this notice).

[b] Most applicable to small systems that already have a process train including basins mixing, precipitation or sedimentation, and filtration. Site specific design should be based on studies conducted on the system's particular water.

[c] See the SWTR compliance technology tables for limitations associated with this technology.

[d] Pretreatment for the removal of microorganisms, iron, manganese, and excessive particulate matter may be needed. Post-treatment disinfection may have to be used.

[e] May not be as efficient as other aeration methods because it does not provide for convective movement of the water thus limiting air-water contact. It is generally used only to adapt existing plant equipment.

[f] This units are highly efficient, however the efficiency depends upon the air-to-water ratio.

[g] Costs may increase if a forced draft is used.

The background section indicated that EPA would identify affordable compliance technologies for those existing regulations where small system variances or variance technologies are not prohibited by the SDWA. There are statutory prohibitions against small system variances or variance technologies for 14 of the 32 SOCs. Table 11 contains the compliance technologies for the 18 SOCs where affordability was considered. Affordability only plays a role in removing options in the smallest size category. The technology costs are based on treatment of all of the water. The technologies that did not meet the affordability criteria in the smallest size category are also identified in the next column called ''other compliance technologies.'' These technologies may be affordable if the concentration of the contaminant is low enough that a portion of the influent stream can be treated and blended with an untreated portion to still meet the MCL. This blending would reduce both the capital and operating and maintenance costs of the process. Systems and States should consider these options under those circumstances. Table 12 contains the compliance technologies for the remaining fourteen SOCs where affordability was not considered due to statutory prohibitions. The statutory prohibitions on variance technologies and small system variances are discussed in detail in Section IV of this notice.

TABLE 11.—COMPLIANCE TECHNOLOGIES BY SYSTEM SIZE CATEGORY FOR THOSE SOC NPDWRS WHERE AFFORDABILITY IS CONSIDERED

Contaminant	Compliance technologies for system size categories (Population served)			
	25–500 (afford)	25–500 (other)	501–3,300 (afford)	3,301–10,000 (afford)
Alachlor	2, 3 [a]	1	1, 2, 3	1, 2, 3.
Atrazine	2, 3	1	1, 2, 3	1, 2, 3.
Carbofuran	2, 3	1	1, 2, 3	1, 2, 3.
Dibromochloropropane	2, 3, 6, 7, 8, 9, 10	1	1, 2, 3, 6, 7, 8, 9, 10	1, 2, 3, 6, 7, 8, 9, 10.
2,4-D	2, 3	1	1, 2, 3	1, 2, 3.
Lindane	2, 3	1	1, 2, 3	1, 2, 3.
Methoxychlor	2, 3	1	1, 2, 3	1, 2, 3.
Pentachlorophenol	2, 3	1	1, 2, 3	1, 2, 3.
Dalapon	2, 3	1	1, 2, 3	1, 2, 3.
Di(2-ethylhexyl) adipate	2, 3, 6, 7, 8, 9, 10	1	1, 2, 3, 6, 7, 8, 9, 10	1, 2, 3, 6, 7, 8, 9, 10.
Di(2-ethylhexyl) phthalate	2, 3	1	1, 2, 3	1, 2, 3.
Dinoseb	2, 3	1	1, 2, 3	1, 2, 3
Diquat	2, 3	1	1, 2, 3	1, 2, 3.
Endothall	2, 3	1	1, 2, 3	1, 2, 3.
Glyphosate	4, 5		4, 5	4, 5.
Hexachlorocyclopentadiene	2, 3, 6, 7, 8, 9, 10	1	1, 2, 3, 6, 7, 8, 9, 10	1, 2, 3, 6, 7, 8, 9, 10.
Picloram	2, 3	1	1, 2, 3	1, 2, 3.
Simazine	2, 3	1	1, 2, 3	1, 2, 3.

[a] This affordability determination assumes that the small system already has the appropriate treatment train in place for mixing, contact, and filtration.

TABLE 12.—COMPLIANCE TECHNOLOGIES BY SYSTEM SIZE CATEGORY FOR THOSE SOC NPDWRS WHERE AFFORDABILITY IS NOT CONSIDERED

Contaminant	Compliance technologies for system size categories (population served)		
	25–500	501–3,300	3,300–10,000
Chlordane	1, 2, 3	1, 2, 3,	1, 2, 3.
Ethylene Dibromide	1, 2, 3, 6, 7, 8, 9, 10	1, 2, 3, 6, 7, 8, 9, 10	1, 2, 3, 6, 7, 8, 9, 10.
Heptachlor	1, 2, 3	1, 2, 3,	1, 2, 3.
Heptachlor Epoxide	1, 2, 3	1, 2, 3,	1, 2, 3.
Polychlorinated Biphenyls	1, 2, 3	1, 2, 3,	1, 2, 3.
Toxaphene	1, 2, 3	1, 2, 3,	1, 2, 3.
2,4,5-TP	1, 2, 3	1, 2, 3,	1, 2, 3.
Benzo(a)pyrene	1, 2, 3	1, 2, 3,	1, 2, 3.
Endrin	1, 2, 3	1, 2, 3,	1, 2, 3.
Hexachlorobenzene	1, 2, 3	1, 2, 3,	1, 2, 3.
Oxamyl	1, 2, 3	1, 2, 3,	1, 2, 3.
2,3,7,8-TCDD (Dioxin)	1, 2, 3	1, 2, 3,	1, 2, 3.
Acrylamide	N/A (treatment technique)	N/A (treatment technique)	N/A (treatment technique).
Epichlorohydrin	N/A	N/A	N/A.

C4. Compliance Technologies for Radionuclides

Table 13 contains the technologies that have been identified as compliance technologies for at least one radionuclide. The table contains the same structure as other tables with a list of limitations that are contained in the footnotes and operator skill level and raw water quality issues.

TABLE 13.—Technologies for Radionuclides

Unit technologies	Limitations (see footnotes)	Operator skill level required [1]	Raw water quality range & considerations
1. Ion Exchange (IE)	(a)	Intermediate	All ground waters.
2. Point of Use (POU) IE	(b)	Basic	All ground waters.
3. Reverse Osmosis (RO)	(c)	Advanced	Surface waters. usually require pre-filtration.
4. POU RO	(b)	Basic	Surface waters usually require pre-filtration.
5. Lime Softening	(d)	Advanced	All waters.
6. Green Sand Filtration	(e)	Basic	
7. Co-precipitation with Barium Sulfate.	(f)	Intermediate to Advanced	Ground waters with suitable water quality.
8. Electrodialysis/Electrodialysis Reversal.		Basic to Intermediate	All ground waters.
9. Pre-formed Hydrous Manganese Oxide Filtration.	(g)	Intermediate	All ground waters.

[1] National Research Council (NRC). Safe Water from Every Tap: Improving Water Service to Small Communities. National Academy Press. Washington, D.C. 1997.

Limitations Footnotes to Table 13: Technologies for Radionuclides

[a] The regeneration solution contains high concentrations of the contaminant ions. Disposal options should be carefully considered before choosing this technology.

[a] When POU devices are used for compliance, programs for long-term operation, maintenance, and monitoring must be provided by water utility to ensure proper performance (see Section III.A of this notice).

[c] Reject water disposal options should be carefully considered before choosing this technology. See other RO limitations described in the SWTR Compliance Technologies Table.

[d] The combination of variable source water quality and the complexity of the chemistry involved in lime softening may make this technology too complex for small surface water systems.

[e] Removal efficiencies can vary depending on water quality.

[f] This technology may be very limited in application to small systems. Since the process requires static mixing, detention basins, and filtration, it is most applicable to systems with sufficiently high sulfate levels that already have a suitable filtration treatment train in place.

[g] This technology is most applicable to small systems that already have filtration in place.

The background section indicated that EPA would identify affordable compliance technologies for those existing regulations where small system variances or variance technologies are not prohibited by the SDWA. There are statutory prohibitions against small system variances for all three radionuclides. Table 14 contains the compliance technologies the three radionuclides without considering affordability due to statutory prohibitions. The statutory prohibitions on variance technologies and small system variances are discussed in detail in Section IV of this notice.

TABLE 14.—Compliance Technologies by System Size Category for Radionuclide NPDWRs, Affordability is Not Considered

Contaminant	Compliance technologies [1] for system size categories (Population Served)		
	25–500	501–3,300	3,300–10,000
Combined radium-226 and radium-228.	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9.
Gross alpha particle activity	3, 4	3, 4	3, 4.
Total beta particle activity and photon activity, average annual concentration.	1, 2, 3, 4	1, 2, 3, 4	1, 2, 3, 4.

[1] (Note: 1) Numbers correspond to those assigned to technologies found in the Compliance Technologies Table for Radionuclides.

D. Stakeholder Involvement and State Consultation

EPA held a stakeholder meeting on May 18 and 19, 1998. The meeting took place at RESOLVE, 1255 23rd Street, N.W., Washington, D.C. Approximately 50 people registered and participated in the meeting. Representatives from nine States were present at the meeting (either at Resolve or on the conference lines) and several others received the material that was sent out prior to the meeting for review. A draft of the ''Cost Evaluation of Small System Compliance Options: Point-of-Use and Point-of-Entry Treatment Units'' was sent out prior to the meeting.

Compliance technology options were presented for each group of contaminants: IOCs, VOC, SOCs and radionuclides on the second day of the stakeholder meeting. A final presentation on POU and POE devices

followed the sessions on the contaminant groups. Since most of the compliance technologies identified for these groups of contaminants were the best available technologies (BATs) listed in the regulations, there were very few significant comments on those presentations. There were a number of significant comments on the POU and POE options, since they were not listed as BATs. The significant comments on the compliance technology list for the non-microbial contaminants regulated before 1996 are as follows:

- One State representative noted that the precipitation approach can cause problems for consumers' water heating tanks. Several stakeholders indicated that pH adjustment using limestone contactors is the least complex process. EPA has included both of these options as compliance technologies for lead. The precipitation approach is not listed as a compliance technology for copper.
- Residuals management was identified as a major factor that would influence technology selection for IOCs. The guidance provides additional details on the residuals produced by each process.
- Stakeholders recommended the inclusion of mechanical aeration and spray aeration, where appropriate, for VOCs along with the limitations that might limit their applicability.
- Stakeholders believed that more data is needed on removal of pesticides by technologies other than carbon, such as membranes. EPA has listed these technologies as ''emerging'' technologies and hopes to generate more data over the coming year.
- Residuals management was identified as a major factor that would influence technology selection for radionuclides. Stakeholders recommended that EPA investigate discharges to septic systems when POU reverse osmosis or ion exchange systems are used as compliance technologies.
- States and other stakeholders recommended that EPA consider listing POU devices as compliance technologies for nitrate by adding a public education component. POU devices are listed as an emerging technology, while EPA determines the necessary requirements of a public education program for nitrate.
- States and other stakeholders agreed with EPA's assessment that POU devices would not be appropriate for VOCs because they do not address all exposure pathways.
- EPA indicated that the cost estimates for POU and POE options were based on conservative assumptions about water consumption and monitoring requirements. Stakeholders did provide comments on these assumptions and EPA will develop other cost estimates.

At the end of the stakeholder meeting, EPA indicated that it welcomed comments on any of the material in the presentations on compliance technology options for non-microbial contaminants. The only comments received dealt with the assumptions used to estimate POU and POE costs for water systems.

IV. Variance Technology Findings for Contaminants Regulated Before 1996

A1. Overview

As previously discussed, compliance and variance technologies are mutually exclusive. The two compliance technology list sections provided compliance technologies for all of the 80 regulated contaminants, including affordable compliance technologies for all classes of small systems where appropriate. Thus, EPA will not, at this time, be listing variance technologies for any existing NPDWR.

The following is a brief discussion of the Agency's approach for determining whether and which variance technologies should be listed for existing regulated drinking water contaminants, as required under SDWA Section 1412(b)(15)(D). The guidance manual contains more detail, as noted earlier. Because this is the first time that EPA has undertaken the variance technology analysis required under the amended SDWA (which includes new findings concerning ''affordability'' and ''protectiveness'') and given the relatively short time for development of this analysis, EPA considers the methodology described here and the resulting finding of no variance technologies to be an initial screening effort, rather than a final determination of any kind. In addition, by enabling EPA to list compliance and variance technologies rather than specifying them by regulation, the statute specifically contemplates that this analysis (and any resulting list) would be subject to revision based on new information and petitions from interested parties. EPA would be very interested in suggestions from the public, and particularly from States, about how to improve the methodology outlined here and discussed in the guidance and in variance technologies that EPA should consider in revising and updating any future variance technology list.

In summary, EPA's methodology is as follows. A two-stage screening process was used to identify those contaminants that would be compared against the national-level affordability criteria. Three contaminants were removed prior to the two-stage screening process. The current total trihalomethane regulation only applies to systems serving greater than 10,000 people. Therefore, small systems do not have to meet the existing standard, so neither compliance nor variance technologies will be listed. Acrylamide and epichlorohydrin are compounds associated with chemical additives used in drinking water treatment. These contaminants are regulated through a treatment technique that requires a certification that the product of the dose and monomer concentration will not exceed certain levels. Treatment technology is not installed to remove the contaminants under this treatment technique. As such, there are no compliance or variance technologies for either of these two contaminants. Table 16 at the end of this section summarizes the process that was used on each contaminant.

A2. Two-Stage Screening Process for Variance Technology Eligibility

The first stage of the screening process was an evaluation of statutory screens that limit the availability of small system variances or variance technologies. There are three statutory screens. The first two prohibit small system variances. The sole purpose of the listing of variance technologies is to enable small systems to obtain a small system variance. Therefore, when these small system variances are not available under the SDWA, variance technologies will not be specified. The third statutory screen is a restriction on the listing of variance technologies.

The first statutory screen is in Section 1415(e)(6)(B) of the SDWA. Small system variances are not available for any microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant. This screen removes 6 contaminants from the consideration for variance technologies.

The second statutory screen is in Section 1415(e)(6)(A) of the SDWA. Small system variances are not available for any MCL or treatment technique with respect to which a NPDWR was promulgated prior to January 1, 1986. The Variance and Exemption Rule describes EPA's interpretation of this section of the SDWA (see 63 Fed. Reg. 19442; April 20, 1998). For this analysis, variance technologies are not available for those contaminants where the pre-1986 MCL has been retained or raised. This screen removes 12 contaminants from consideration.

The final statutory screen is in Section 1412(b)(15)(B) of the SDWA. The Administrator shall not identify any

variance technology under this paragraph, unless the Administrator has determined, considering the quality of the source water to be treated and the expected useful life of the technology, that the variance technology is protective of public health. The procedures developed by EPA to define ''protective of public health'' levels are described in detail in the guidance document for the variance technology screening effort. In summary, EPA used available data to estimate Unreasonable Risk to Health (URTH) values for the contaminants remaining after the first two screens. The URTH values were used as a surrogate for the protection of public health requirement of Section 1412(b)(15)(B) because the URTH values are based on a short-term exposure of up to 7 years. Section 1412(b)(15)(B) requires that the variance technology be protective of public health for the expected useful life of the technology. Most technologies will have expected useful lives greater than 7 years, so a concentration that is protective of public health would need to be less than or equal to the URTH value. For 19 contaminants, the derived URTH value was equal to the MCL or very close to the MCL. For these 19 contaminants, it was determined that in order to be protective of public health, the MCL had to be met. Since the MCL is the treatment standard, compliance technologies are the only alternative. Variance technologies are not listed for these contaminants.

The second stage of the screening process involved affordability screens and evaluations. Since the statute authorizes a variance technology listing only where compliance technologies are unaffordable for any category of small systems, any contaminant that has a low-cost compliance technology will not have variance technologies. For this screen, the best available technologies listed in the regulations were examined and technologies that imposed an increase of less than $300/household/year for each size category were identified to screen for affordability. The technologies that met this screening criterion were aeration, aeration plus chlorination, corrosion control, and oxidation. This screen removed 24 contaminants from consideration.

The next affordability screen involved an evaluation of compliance monitoring data and National Pesticide Survey data for the remaining 16 contaminants (14 pesticides). EPA assumed that if there were no violations, existing technologies for compliance have been affordable. Six pesticides were removed from consideration based on the following criteria: no detections in the National Pesticide Survey, MCLs at least one order of magnitude higher than the reporting limit for the compliance monitoring data, and a low positive rate in the compliance data with no MCL exceedances. Violations for the remaining 10 contaminants were then examined in the Safe Drinking Water Information System (SDWIS). Since only systems with violations of the MCL will require treatment, 5 contaminants were removed because there were no MCL violations.

The results of the two-stage screening process were that only five contaminants remained eligible for variance technologies and would proceed through a more extensive affordability analysis. These five contaminants were: antimony, asbestos, atrazine, di-(2-ethylhexyl) phthalate and lindane. The extensive affordability analysis used national-level affordability criteria to determine if there is an affordable compliance technology. The derivation of the national-level affordability criteria are described below.

A3. National-Level Affordability Criteria

As discussed in the background section, EPA did evaluate technologies for each small size category against an affordable technology criterion for those regulations where a small system variance could be granted. These size category-dependent affordable technology criteria are collectively referred to as ''national-level affordability criteria.'' This nomenclature has been used to distinguish the national-level affordability criteria from the affordability criteria that States will use for determinations affecting individual systems. EPA published information regarding these ''State-level'' affordability criteria in February, 1998 (EPA–816–R–98–002, *Information for States on Developing Affordability Criteria for Drinking Water*). Technologies determined to be ''unaffordable'' under the national-level affordability criteria may still be affordable for a specific system within the size category, in which case the system may install that technology if it so chooses. Conversely, if a financially disadvantaged small water system out of compliance with a NPDWR cannot afford any of the compliance technologies that are determined to be ''affordable'' under the national-level affordability criteria, one option for that system would be to apply to the State for an exemption. Other options are described in the EPA document cited above, *Information for States on Developing Affordability Criteria for Drinking Water*.

To determine if there are any affordable compliance technologies for a given NPDWR, the national-level affordability criteria are compared against the cost estimates for the applicable treatment technologies. To make this comparison, there must be a consistent unit of measure for both parameters. The selected approach was to measure user burden as the increase to annual household water bills that would result from installation of treatment. For community water systems, the household was selected as the most sensitive user for cost increases (see background document entitled *National-Level Affordability Criteria Under the 1996 Amendments of the Safe Drinking Water Act*). A second document evaluated non-community water systems (NCWS) and compared their vulnerability to cost increases with households in community water systems (see background document entitled *An Assessment of the Vulnerability of Non-community Water Systems to SDWA Cost Increases*). The conclusion based on this comparison was that the categories of NCWS were either not vulnerable to SDWA-related treatment cost increases or were less vulnerable to SDWA-related treatment cost increases than a typical household.

A summary of the methodology used to determine the national-level affordability criteria is described below. The household is the focus of the national-level affordability analysis. Treatment technology costs are presumed affordable to the typical household if they can be shown to be within an affordability index range (defined as a range of percentages of median household income) that appears reasonable when compared to other household expenditures. This approach is based on the assumption that affordability to the median household served by the CWS can serve as an adequate proxy for the affordability of technologies to the system itself. EPA has chosen to express the water system financial and operational characteristics using their median values, which is a measure of their respective central tendencies. EPA believes that the national-level affordability criteria should describe the characteristics of typical systems and should not address extreme situations where costs might be extremely low or excessively burdensome.

After selecting the impacts on households as the measure for comparing national-level affordability and treatment costs, a consistent set of units was needed to make the

comparison. The treatment cost models produce rate increases measured in dollars/thousand gallons ($/kgal). Annual household water consumption is needed to convert the treatment technology costs into the increase in annual household water bills. Multiplying the rate increase by the annual household consumption yields the increase to annual household water bills ($/household/year increase).

The national-level affordability criteria have two major components: current annual water bills (baseline) and the affordability threshold. The current annual household water bills were subtracted from the affordability threshold to determine the maximum increase that can be imposed by treatment and still be considered affordable. This difference was compared with the converted treatment costs to make the affordable technology determinations. This difference is called the available expenditure margin.

The affordability threshold was determined by comparing the cost of public water supply for households with other household expenditures and risk-averting behavior. National expenditure estimates were derived to illustrate the current allocation of household income across a range of general household expenditures. This consumer expenditure data provided a basis for determining the affordability threshold by comparing baseline household water costs to median household income (MHI) to determine the financial impact of increased water costs on households.

There are three parameters needed for each size category to perform the affordable technology analysis. These parameters are: annual household consumption, current annual water bills, and median household income. The annual household water consumption and the current annual water bills were derived directly from data in the 1995 Community Water System Survey. The median household income data were derived by linking the CWSS data with data in the 1990 Census using zip codes.

The national-level affordability criteria are based on an affordability threshold of 2.5% of the median household income (MHI). The rationale for the selection of 2.5% MHI as the affordability threshold is provided in the guidance document entitled ''Variance Technology Findings for Contaminants Regulated Before 1996.'' For each size category, median values have been used for annual household water consumption, baseline annual water bills, and median household income. The baseline water bills ranged from 0.75% to 0.78% MHI in the three size categories. Thus, the available expenditure margin were approximately 1.75% MHI for each size category. The following table summarizes the national-level affordability criteria and shows the maximum increase that could occur using these criteria. Most systems would not be expected to actually experience cost increases of this magnitude if a compliance technology was installed. Many compliance technologies impose substantially lower household costs. For example, the screening process examined several technologies that imposed less than $300/household per year increases in all three size categories. Appendix F of the ''National-Level Affordability Criteria Under the 1996 Amendments to the Safe Drinking Water Act'' report lists mitigating measures that could reduce the impact on households. In addition, the national-level affordability criteria do not consider the impact of financial assistance from State Revolving Fund loans or other sources. This financial assistance could also reduce the impact on households in those systems that qualify for financial assistance.

TABLE 15.—National-Level Affordability Criteria

System size population served	Baseline			Affordability threshold (2.5% MHI)	Available expenditure margin ($/hh/year increase)
	Mean MHI	Water bills ($/hh/yr)	Water bills (%MHI)		
25–500	$30,626	$228	0.75	$766	$537
501–3,300	26,672	204	0.76	667	463
3,301–10,000	27,641	217	0.78	691	474

A4. Affordable Technology Analysis using National-Level Affordability Criteria

Violation data on the five contaminants that passed through the screening process were used to estimate the needed removal efficiency. The highest violation for each contaminant was determined and confirmed with the State. Technology cost estimates to reach the MCL from the highest confirmed violation were compared against the available expenditure margin for each size category (see Table 15). Technology cost estimates were derived for both central treatment options and centrally-managed Point-of-Use and Point-of-Entry device options. The procedures followed for this analysis are described in detail in the background document entitled ''Variance Technology Findings for Contaminants Regulated Prior to 1996.'' Based on this analysis, an affordable compliance technology was found for each of the five contaminants for all system sizes and expected source water qualities. For most of the system size/source water quality combinations, there are multiple affordable technologies. The following table summarizes the rationale for a finding of no variance technologies for each of the 80 regulated contaminants.

TABLE 16.—RATIONALE FOR THE LACK OF VARIANCE TECHNOLOGIES FOR REGULATED CONTAMINANTS

Contaminant	Rationale
Giardia lamblia	Section 1415(e)(6)(B) of SDWA.
Legionella	Section 1415(e)(6)(B) of SDWA.

TABLE 16.—RATIONALE FOR THE LACK OF VARIANCE TECHNOLOGIES FOR REGULATED CONTAMINANTS—Continued

Contaminant	Rationale
Standard Plate Count	Section 1415(e)(6)(B) of SDWA.
Turbidity	Section 1415(e)(6)(B) of SDWA.
Viruses	Section 1415(e)(6)(B) of SDWA.
Total Coliform	Section 1415(e)(6)(B) of SDWA.
Arsenic	Section 1415(e)(6)(A) of SDWA.
Beta particle & photon radioactivity.	Section 1415(e)(6)(A) of SDWA.
Gross alpha particle activity.	Section 1415(e)(6)(A) of SDWA.
Radium 226 & 228 (combined).	Section 1415(e)(6)(A) of SDWA.

TABLE 16.—RATIONALE FOR THE LACK OF VARIANCE TECHNOLOGIES FOR REGULATED CONTAMINANTS—Continued

Contaminant	Rationale
Total Trihalomethanes	MCL does not apply (applies only to systems > 10,000 people).
Benzene	Affordability Screen.
Carbon Tetrachloride	Affordability Screen.
p-Dichlorobenzene	Affordability Screen.
1,2-Dichloroethane	Affordability Screen.
1,1-Dichloroethylene	Affordability Screen.
1,1,1-Trichloroethane	Affordability Screen.
Trichloroethylene	Affordability Screen.
Vinyl Chloride	Section 1412(b)(15)(B)
Chlorobenzene	Affordability Screen.
o-Dichlorobenzene	Affordability Screen.
cis-1,2-Dichloroethylene.	Affordability Screen.
trans-1,2-Dichloroethylene.	Affordability Screen.
1,2-Dichloropropane	Affordability Screen.
Ethylbenzene	Affordability Screen.
Styrene	Section 1412(b)(15)(B).
Tetrachloroethylene	Affordability Screen.
Toluene	Affordability Screen.
Xylenes (total)	Affordability Screen.
Dichloromethane	Affordability Screen.
1,2,4-Trichlorobenzene.	Affordability Screen.
1,1,2-Trichloroethane	Affordability Screen.
Alachlor	Violation Screen.
Atrazine	Affordable Technology Found.
Carbofuran	Violation Screen.
Chlordane	Section 1412(b)(15)(B).
Dibromochloropropane.	Affordability Screen.
2,4-D	Violation Screen.
Ethylene Dibromide	Section 1412(b)(15)(B).
Heptachlor	Section 1412(b)(15)(B).
Heptachlor Epoxide	Section 1412(b)(15)(B).
Lindane	Affordable Technology Found.
Methoxychlor	Violation Screen.
Polychlorinated Biphenyls.	Section 1412(b)(15)(B).
Pentachlorophenol	Violation Screen.
Toxaphene	Section 1412(b)(15)(B).
2,4,5-TP	Section 1415(e)(6)(A).
Benzo(a)pyrene	Section 1412(b)(15)(B).
Dalapon	Violation Screen.
Di(2-ethylhexyl) adipate.	Affordability Screen.
Di(2-ethylhexyl) phthalate.	Affordable Technology Found.
Dinoseb	Violation Screen.
Diquat	Violation Screen.
Endothall	Violation Screen.
Endrin	Section 1415(e)(6)(A).
Glyphosate	Affordability Screen

TABLE 16.—RATIONALE FOR THE LACK OF VARIANCE TECHNOLOGIES FOR REGULATED CONTAMINANTS—Continued

Contaminant	Rationale
Hexachlorobenzene	Section 1412(b)(15)(B).
Hexachlorocyclopentadiene.	Affordability Screen.
Oxamyl	Section 1412(b)(15)(B).
Picloram	Violation Screen.
Simazine	Violation Screen.
2,3,7,8-TCDD (Dioxin)	Section 1412(b)(15)(B).
Acrylamide	Not a technology-based NPDWR.
Epichlorohydrin	Not a technology-based NPDWR.
Fluoride	Section 1415(e)(6)(A).
Asbestos	Affordable Technology Found.
Barium	Section 1415(e)(6)(A).
Cadmium	Section 1412(b)(15)(B).
Chromium	Section 1415(e)(6)(A).
Mercury	Section 1415(e)(6)(A).
Nitrate (as N)	Section 1415(e)(6)(A).
Nitrite (as N)	Section 1412(b)(15)(B).
Total Nitrate & Nitrite (as N).	Section 1412(b)(15)(B).
Selenium	Section 1415(e)(6)(A).
Antimony	Affordable Technology Found.
Beryllium	Section 1412(b)(15)(B).
Cyanide (as free cyanide).	Section 1412(b)(15)(B).
Thallium	Section 1412(b)(15)(B).
Lead	Affordability Screen.
Copper	Section 1412(b)(15)(B).

Based on the evaluation outlined above, EPA has found that there is currently no basis to list variance technologies for any of the 80 regulated contaminants. EPA believes that this is a reasonable outcome. One of the findings in the National-Level Affordability Criteria Document is that water has historically been underpriced, and as a result, prices have increased at a higher rate over the last several years than other household utilities as demonstrated by the consumer price index for utilities. Since water rates are increasing faster than median household incomes, additional treatment, beyond that currently required, may increasingly become ''unaffordable'' based on the national-level affordability criteria. Another factor that will increase treatment costs is the promulgation of new regulations. The application of treatment technology to comply with those regulations will increase the baseline water bills. Thus, while variance technologies are not being specified for the existing regulations, they may well be listed for future regulations since the available expenditure margin will shrink as additional treatment is required.

B. Availability of guidance document explaining why there is no need at present for any variance technology

This list is supported by the updated guidance document entitled ''Variance Technology Findings for Contaminants Regulated Before 1996'' that will be released on September 15, 1998. The guidance document provides more detail on the two-stage screening process, the national-level affordability criteria and the finding that there is currently no basis to list variance technologies for the 80 regulated contaminants.

C. Stakeholder Involvement and State Consultation

EPA held a stakeholder meeting on May 18 and 19, 1998. The meeting took place at RESOLVE, 1255 23rd Street, N.W., Washington, D.C. Approximately 50 people registered and participated in the meeting. Representatives from nine States were present at the meeting (either at Resolve or on the conference lines) and several others received the material that was sent out prior to the meeting for review. A draft of the ''National-Level Affordability Criteria Under the 1996 Amendments to the Safe Drinking Water Act'' was sent out prior to the meeting.

The first topic discussed on May 18, 1998 was the two-stage screening process that identified only five of the eighty regulated contaminants as being potential candidates for variance technologies. The major comments from general stakeholders and comments from States are summarized below:

- The occurrence screen generated comments from both general stakeholders and States. Both were concerned that systems with problems could be overlooked in the data sources used by EPA. EPA stated that the lists are not static documents and that they can be updated if new data are received. For variance technologies, this new data is not limited to technology performance. EPA noted that if data are received showing violations for contaminants removed by the occurrence screens, then EPA would use this data to determine if the system needed a variance technology. As was

previously noted, EPA believes that the results of this analysis would be subject to revision based on new information and petitions from interested parties.

• EPA presented several options for the statutory prohibition in Section 1415(e)(6)(A) of the SDWA that was used as one of the screens. States preferred the lead option, which was that variance technologies might be available for those pre-1986 NPDWRs where the MCL was lowered after 1986. This lead option was used in the final two-stage screening process for variance technologies.

• Some stakeholders questioned whether any relief is being provided because the initial screening process left so few contaminants eligible for variance technologies. EPA emphasized that variances are intended to be the exception and that the goal is to bring as many water systems into compliance as possible. EPA also emphasized that the same procedures would be used for future regulations and that variance technologies might play a larger role in those regulations.

• A number of State attendees at both the May 1998 stakeholder meeting and the July 1997 stakeholder meeting have indicated that they did not think there was a need for variance technologies for the existing regulations in their State. Ten States attended the July 1997 stakeholder meeting and heard the initial discussion on variance technologies.

Another topic discussed at the stakeholder meeting on May 18, 1998 was the national-level affordability criteria. This topic was broken into three parts: an overview, establishment of the baseline, and options for the affordability threshold. The comments on this topic were concentrated on the development of the baseline and the identification of the range of options for national-level affordability criteria. The major comments are summarized below:

• Baseline values were determined for three parameters: annual household water consumption, median household income, and current annual water bills. Stakeholders were asked if separate baselines should be established for ground water and surface water systems. Stakeholders stated that separate baselines should be established, but that the distinction between ground water and surface water systems was less significant in small systems because most rely on ground water. EPA evaluated the data and determined that there was very little distinction between ground water systems and surface water systems, so separate baselines were not established.

• Stakeholders were asked if there were other mechanisms to estimate median household income (MHI) for customers served by small water systems. One stakeholder suggested using lower income levels instead of the median. EPA stated that the national-level affordability criteria should describe the characteristics of typical systems and typical households and should not address extreme situations where costs might be extremely low or excessively burdensome. The median was chosen because it is a measure of central tendency. EPA also noted that it did not have data on current water bills and annual household water consumption for households with lower income levels. EPA stated that it would be inconsistent to use the median values for existing water bills and annual consumption with lower income levels.

• Stakeholders were also asked if mean or median values for the three parameters should be used in establishing the national-level affordability criteria. Stakeholders recommended consistency rather than a preference for using means or medians. Median values were used for all three parameters.

• An initial range for the affordability threshold was identified at the meeting. This range was from 1.5% to 3% MHI. Stakeholders, in general, did not express a strong opinion about where the affordability threshold should be set within that range. One State offered that 1.5% should be used, since it was the lowest value within the range. EPA selected 2.5% based on the rationale described in Part A of this Section.

At the end of the meeting, EPA indicated that it would accept comments on the two-stage screening process and the national-level affordability criteria through the middle of June. EPA stated that comments received by then could be incorporated into the analysis to determine their impact. EPA did not receive any comments from stakeholders after the meeting on either the screening process or the national-level affordability criteria.

Dated: July 31, 1998.

J. Charles Fox,

Acting Assistant Administrator, Office of Water Environmental Protection Agency.

[FR Doc. 98–21032 Filed 8–5–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 98–1529]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On July 31, 1998, the Commission released a public notice announcing the August 19–20, 1998, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

FOR FURTHER INFORMATION CONTACT: Linda Simms, at (202) 418–2330 or via the Internet at lsimms@fcc.gov or Jeannie Grimes at (202) 418–2313 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–7314. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: July 31, 1998.

The next meeting of the North American Numbering Council (NANC) will be held on Wednesday, August 19, from 8:30 a.m., until 5:00 p.m., and on Thursday, August 20, 1998, from 8:30 a.m., until 12 noon at the Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, D.C.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before each meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Linda Simms at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda

The planned agenda for the August 19–20, meeting is as follows:

1. Approval of meeting minutes
2. Local Number Portability Administration (LNPA) Working Group Report.
3. N11 Ad Hoc Working Group Report. Progress update on recommendation development pursuant to the *First Report and Order and Further Notice of Proposed Rulemaking,* In the Matter of Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket 92–105, FCC 97–51.
4. Numbering Resource Optimization Working Group Report.
5. Industry Numbering Committee Report.
6. Cost Recovery Working Group Report.
7. North American Numbering Plan Administration (NANPA) Oversight Working Group Report.
8. COCUS and Proposed Line Number Utilization Survey. Further discussion and review of contributions on question of a rule or clarification of existing rule for reporting utilization data. Discussion will focus on possible enforcement mechanism; audits; forecasts from resellers; appeals and confidentiality issues.
9. Discussion of Chairman Hasselwander's proposal on how to manage future deliberations and interactions with the North American Numbering Plan Administrator on issue of net costs associated with extension to 1000s block number pooling administration.
10. State NPA Issue.
11. Referral from Ordering and Billing Forum.
12. Tutorial—Law Enforcement Issues.
13. Other Business.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–21083 Filed 8–5–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 4:37 p.m. on Friday, July 31, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a matter relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Director Ellen S. Seidman (Director, Office of Thrift Supervision), Director Julie L. Williams (Acting Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(9)(B) and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(9)(B) and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, DC.

Dated: July 31, 1998.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–21110 Filed 8–3–98; 5:02 pm]

BILLING CODE 6714–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Reallotment of FY 1997 Funds for Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of determination concerning funds available for reallotment.

SUMMARY: Notice is hereby given that a preliminary determination has been made that fiscal year (FY) 1997 Low Income Home Energy Assistance Program (LIHEAP) funds are available for reallotment *to States, territories, and tribes and tribal organizations receiving FY 1998 direct LIHEAP funding* Section 2607(b)(1) of Low Income Home Energy Assistance Act (the Act), Title XXVI of Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 *et seq.*), as amended, requires that if the Secretary of the Department of Health and Human Services determines that, as of September 1 of any fiscal year, an amount in excess of certain levels allotted to a grantee for any fiscal year will not be used by the grantee during the fiscal year, the Secretary must notify the grantee and publish a notice in the **Federal Register** that such funds may be reallotted to LIHEAP grantees during the following fiscal year. (No funds may be alloted to entities that are not direct LIHEAP grantees during FY 1998.) It has been determined that $82,025 may be available for reallotment during FY 1997. This determination is based on a revised report from the State of Alabama, which was submitted to the Office of Community Services as required by 45 CFR 96.82.

The statute allows grantees who have funds unobligated at the end of the fiscal year for which they are awarded to request that they be allowed to carry over up to 10 percent of their allotments to the next fiscal year. Funds in excess of this amount must be returned to DHHS and are subject to reallotment under section 2607(b)(1) if the Act, The amount described in this notice was reported as unobligated FY 1997 funds in excess of the amount that the State of Alabama could carry over to FY 1998.

The State of Alabama was notified by certified mail that $82,025 of its FY 1997 funds may be reallotted. In accordance with section 2607(b)(3), the Chief Executive Officer of the State of Alabama has 30 days from the date of the letter to submit comments to: Donald Sykes, Director, Office of Community Services, 370 L'Enfant Promenade, SW, Washington, DC 20047. The comment period expires August 31, 1998.

After considering any comments submitted, the Chief Executive Officer will be notified of the decision, and the decision also will be published in the **Federal Register**. If funds are reallocated, they will be allocated in accordance with section 2604 of the Act and must be treated by LIHEAP grantees receiving them as an amount appropriated for FY 1998. As FY 1998 funds, they will be subject to all requirements of the Act, including section 2607(b)(2), which requires that a grantee obligate at least 90% of its total block grant allocation for a fiscal year by the end of the fiscal year for which the funds are appropriated, that is, by September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Fox, Director, Divison of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, SW, Washington, DC 20447; telephone (202) 401–9351.

Dated: July 29, 1998.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 98–21078 Filed 8–5–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KB, the Administration on Children, Youth and Families (ACYF) (62 FR 64592), as last amended, December 8, 1997; Chapter KF, the Office of Child Support Enforcement (OCSE) (63 FR 4455), as last amended, January 29, 1998; Chapter KP, the Office of the Deputy Assistant Secretary for Administration (ODASA) (63 FR 81), as last amended, January 2, 1998; and Chapter KR, the Office of Refugee Resettlement (ORR) (60 FR 27316), as last amended, May 23, 1995. This notice reflects the realignment of the discretionary grants function within ACF.

These Chapters are amended as follows:

I. Chapter KB, Administration on Children, Youth and Families

A. Delete KB.10 Organization in its entirety and replace with the following:

KB.10 Organization. The Administration on Children, Youth and Families is headed by a Commissioner, who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Commissioner (KBA)
Office of Administration (KBA1)
Office of Grants Management (KBA2)
Head Start Bureau (KBC)
Program Operations Division (KBC1)
Program Support Division (KBC2)
Children's Bureau (KBD)
Office of Child Abuse and Neglect (KBD1)
Division of Policy (KBD2)
Division of Program Implementation (KBD3)
Division of Data, Research and Innovation (KBD4)
Division of Child Welfare Capacity Building (KBD5)
Family and Youth Services Bureau (KBE)
Child Care Bureau (KBG)
Program Operations Division (KBG1)
Policy Division (KBG2)

B. Delete KB.20 Functions, Paragraph A, in its entirety and replace with the following:

KB.20 Functions. A. The Office of the Commissioner serves as principal advisor to the Assistant Secretary for Children and Families, the Secretary, and other officials of the Department on the sound development of children, youth, and families. It provides executive direction and management strategy to ACYF components. The Deputy Commissioner assists the Commissioner in carrying out the responsibilities of the Office.

In the Immediate Office of the Commissioner, program and policy coordination staff serve as the central control point for policy development and operational and long range program planning; research and evaluation staff plan and manage major research, evaluation, and data analysis activities; and communication and customer service staff plan and manage internal and external communication processes, including correspondence systems and electronic mail requests.

In addition to the Immediate Office, the Office of the Commissioner contains two organizational units. In support of the Commissioner and Deputy Commissioner and in consultation with ACYF programs the:

1. Office of Administration manages the formulation and execution of the budgets for ACYF programs and for Federal administration; provides support for ACYF's personnel administration functions, including staffing, employee and labor relations, performance management and employee recognition, and staff development and training; supports and manages procurements, particularly in ACYF-wide activities such as the discretionary grant paneling process; manages ACYF-controlled space and facilities; performs manpower planning and administration; plans for, acquires, distributes, and controls ACYF supplies; provides mail and messenger services; maintains duplicating, fax, and computer and computer peripheral equipment; supports and manages automation within ACYF; provides for health and safety; and performs various other administrative functions.

2. Office of Grants Management provides management and technical administration for discretionary grants for ACYF, the Administration on Developmental Disabilities (ADD), and the Administration for Native Americans (ANA); reviews, certifies and/or signs all discretionary grants; assures that all discretionary grants awarded by ACYF, ADD, and ANA conform with applicable statutes, regulations, and policies; computes grantee allocations, prepares discretionary grant awards, ensures incorporation of necessary grant terms and conditions, and monitors grantee expenditures; analyzes financial needs under discretionary grant programs; provides data in support of apportionment requests; prepares reports and analyses on the grantee's use of funds; maintains liaison and coordination with appropriate ACF and HHS organizations to ensure consistency between ACYF, ADD, and ANA discretionary grant systems and the Department's grant payment systems; provides technical assistance to regional components on discretionary grant operations and technical grants mangement issues; and performs audit resolution activities for ACYF, ADD, and ANA discretionary grant programs. The Office of Grants Management coordinates and maintains liaison with the Department and other federal agencies on discretionary grants management and administration operational issues and activities.

C. Delete KB.20 Functions, Paragraph B.

II. Chapter KF, Office of Child Support Enforcement

A. Delete KF.10 Organization in its entirety and replace with the following:

KF.10 Organization. The Office of Child Support Enforcement is headed by a Director and consists of:

Office of the Director (KFA)
Office of Central Office Operations (KFB)
Division of Audit (KFB1)
Division of Program Operations (KFB2)
Division of Policy and Planning (KFB3)
Division of Consumer Services (KFB4)
Division of State and Local Assistance (KFB5)
Office of Automation and Special Projects (KFC)
Division of Child Support Information Systems (KFC4)
Office of Grants Management (KFD)

B. Delete KF.20 Functions, Paragraph A, in its entirety and replace with the following:

KF.20 Functions. A. Office of the Director. The Director is also the Assistant Secretary for Children and Families and is directly responsible to the Secretary for carrying out OCSE's mission. The Deputy Director/Commissioner has day-to-day operational responsibility for Child Support Enforcement programs. The Deputy Director/Commissioner assists the Director in carrying out responsibilities of the Office and provides direction and leadership to the Office of Central Office Operations, Office of Automation and Special Projects and Office of Grants Management.

The Office is responsible for developing regulations, guidance and

standards for States to observe in locating absent parents; establishing paternity and support obligations and enforcing support obligations; maintaining relationships with Department officials, other federal departments, State and local officials, and private organizations and individuals interested in the CSE program; coordinating and planning child support enforcement activities to maximize program effectiveness; and approving all instructions, policies and publications issued by OCSE staff.

C. KF.20 Functions. Add paragraph D. Add the following to establish paragraph D.

D. Office of Grants Management is headed by a Director who reports to the Deputy Director/Commissioner and provides management and technical administration for discretionary grants to the Office of Child Support Enforcement (OCSE), Office of Community Services (OCS), Office of Family Assistance (OFA) and Office of Planning, Research and Evaluation (OPRE); reviews, certifies and/or signs all discretionary grants; assures that all discretionary grants awarded by OCSE, OCS, OFA and OPRE conform with applicable statutes, regulations, and policies; computes grantee allocations, prepares discretionary grant awards, ensures incorporation of necessary grant terms and conditions, and monitors grantee expenditures; analyzes financial needs under discretionary grant programs; provides data in support of apportionment requests; prepares reports and analyses on the grantee's use of funds; maintains liaison and coordination with appropriate ACF and HHS organizations to ensure consistency between OCSE, OCS, OFA, and OPRE discretionary grant systems and the Department's grant payment systems; and provides technical assistance to regional components on discretionary grant operations and technical grants management issues; and performs audit resolution activities for OCSE, OCS, OFA, and OPRE discretionary grant program. On behalf of OCSE, OCS, OFA, and OPRE, coordinates and conducts liaison with the Department and other federal agencies on discretionary grants.

III. Chapter KP, Office of the Deputy Assistant Secretary for Administration

A. Delete KP.20 Functions, Paragraph C, in its entirety and replace with the following:

C. The Office of Financial Services (OFS) supports the Deputy Assistant Secretary for Administration in fulfilling ACF's Chief Financial Officer, Management Control Officer, and Chief Grants Officer responsibilities including preparation of the CFO 5 Year Plan; performs audit oversight and liaison activities, including preparing reports to Congress, Office of the General Counsel and the Office of the Inspector General. OFS provides management and technical administration of ACF's formula, entitlement and block grants; writes/interprets financial policy and researches appropriation law issues; oversees and coordinates ACF's Federal Manager's Financial Integrity Act (FMFIA) activities; performs debt management functions; develops and administers quality assurance, training and certification programs for grants management; and is responsible for the annual preparation and audit of ACF's financial statement requirements. It develops/interprets internal policies and procedures for OFS components and coordinates the management of ACF's interagency agreement activities.

OFS provides management and technical administration of ACF's formula, entitlement and block grants; assures that all formula, entitlement and block grants awarded by ACF conform with applicable statutes, regulations, and policies; computes grantee allocations, prepares formula, entitlement and block grant awards, ensures incorporation of necessary grant terms and conditions, and monitors grantee expenditures; analyzes financial needs under formula, entitlement and block grant programs; provides data in support of apportionment requests; prepares reports and analyses on the grantee's use of funds; maintains liaison and coordination with appropriate ACF and HHS organizations to ensure consistency between ACF formula, entitlement and block grant systems and the Department's grant payment systems; and provides technical assistance to ACF program and regional components on formula, entitlement and block grant operations and technical grants management issues; and performs audit resolution activities for ACF formula, entitlement and block grant programs. OFS serves as the lead for ACF in coordination and liaison with the Department and other federal agencies on formula, entitlement and block grants management and administration operational issues and activities.

OFS provides agency-wide guidance to program and regional office staff on grant related issues; including developing and interpreting financial and grants policy, coordinating strategic grants planning, facilitating policy advisory groups, and assuring consistent grant program announcements. OFS prepares, coordinates and disseminates action transmittals, information memoranda, and other policy guidance on financial and grants management issues; provides financial and grants administration training and technical assistance to ACF staff and grantees; directs and/or coordinates management initiatives to improve financial administration of ACF mandatory and discretionary grant programs. OFS also develops and delivers grants management training to ACF program and financial staff.

B. Delete KP.20 Functions, Paragraph D, in its entirety and replace with the following:

D. The Office of Management Services (OMS) provides centralized management and administration of acquisitions for ACF headquarters and regional components; assures that all contracts awarded conform to applicable statutes, regulations and policies; develops ACF policies, procedures and instructions for the award and administration of all ACF acquisitions; reviews and interprets proposed HHS and OMB regulations, circulares and directives pertaining to acquisition management; solicits, negotiates, awards, modifies, terminates and closes all acquisitions issued by ACF; conducts the Small and Disadvantaged Business Utilization Program; and provides training and technical assistance to program and staff components on significant acquisition policies and procedures. OMS serves as the lead for ACF in coordination and liaison within ACF and with the Department, OMB, GSA and other federal agencies on procurement management issues and activities.

IV. Chapter KR, Office of Refugee Resettlement

A. Delete KR.20 Functions, Paragraph A, in its entirety and replace with the following:

KR.20 Functions. A. Office of the Director is directly responsible to the Assistant Secretary for Children and Families for carrying out ORR's mission and providing guidance and general supervision to the components of ORR. Within the Office of the Director, staff assist the Director in managing the formulation of program policy and budget and in the formulation of salaries and expense budgets. Staff also provide administrative, personnel and data processing support services.

The Office coordinates with the lead refugee and entrant program offices of other federal departments; provides leadership in representing refugee and entrant programs, policies and administration to a variety of governmental entities and other public

and private interests; and acts as the coordinator of the total refugee and entrant resettlement effort for ACF and the Department.

The Discretionary Grants Unit, responsible to the Office of the Director, provides technical administration of ORR discretionary grants; reviews, certifies and/or signs all discretionary grants; assures that all discretionary grants awarded by ORR conform with applicable statutes, regulations, and policies; prepares discretionary grant awards, ensures incorporation of necessary grant terms and conditions, and prepares reports and analyses on the grantee's use of funds; maintains liaison and coordination with appropriate ACF and HHS organizations to ensure consistency between ORR discretionary grant systems and the Department's grant payment systems; and performs audit resolution activities for ORR discretionary grant program.

B. Delete KR.20 Functions, Paragraph C, in its entirety and replace with the following.

C. Division of Community Resettlement directs and manages effective refugee resettlement through the programmatic implementation of grants, contracts and special initiatives associated with national discretionary activity. Provides management of ORR discretionary grants; computes grantee allocations, and monitors grantee expenditures; analyzes financial needs under discretionary grant programs; provides data in support of apportionment requests; and provides technical assistance on discretionary grants operations. The ORR coordinates and provides liaison with the Department and other federal agencies on discretionary grants operational issues and other activities as specified by the Director or required by Congressional mandate.

The Division ensures the quality of medical screening and initial medical treatment of refugees; collects data and performs analyses on the changing needs of the refugee and entrant population; provides leadership to identify data needs and sources, formulates data and reporting requirements; assists states and private agencies on data reporting and the resolution of reporting problems; compiles, evaluates, and disseminates information on the nationwide performance and costs of refugee service programs; responds to unanticipated refugee and entrant arrivals or significant increases in arrivals to communities where adequate or appropriate services do not exist; strengthens the role of ethnic community national or multi-State organizations to promote economic independence among refugees; provides for English Language Training and provides where specific needs have been shown and recognized by the Director for health (including mental health) services, social services, educational and other services.

The Division develops Repatriation plans to make arrangements and approve payments for temporary assistance to certain U.S. citizens and dependents repatriated from foreign countries, and for the hospitalization of certain U.S. Nationals repatriated because of mental illness.

Dated: August 3, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

[FR Doc. 98–21077 Filed 8–5–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0320]

Agency Emergency Processing Request Under OMB Review; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 11, 1998 (63 FR 32102). The document announced an opportunity for public comment on a proposed collection of information that has been submitted to the Office of Management and Budget for emergency processing under the Paperwork Reduction Act of 1995. The notice published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In FR Doc. 98–15484, appearing on page 32102, in the **Federal Register** of Thursday, June 11, 1998, the following correction is made:

1. On page 32103, in the second column, beginning in the first line, ''a nutrient claim or a health claim that is based on an authoritative statement of a scientific body of the Federal Government or the National Academy of Sciences. Under these sections of the act, a food producer that intends to use such a claim must submit a notification of its intention to use the claim 120 days before it begins marketing'' is corrected to read ''a nutrient content claim or a health claim that is based on an authoritative statement of certain scientific bodies of the Federal Government or of the National Academy of Sciences or any of its subdivisions. Under these sections of the act, a food producer may use such a claim in the labeling of an appropriate product 120 days after a complete notification of the claim is submitted to FDA''.

Dated: July 29, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–20956 Filed 8–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biotechnology Manufacturing Grassroots Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Pacific Region, and the Center for Biologics Evaluation and Research (CBER), is announcing the following meeting: Biotechnology Manufacturing Grassroots Meeting. The topic to be discussed is mechanisms and processes through which the agency could potentially increase operational efficiency in relation to both the pre- and post-approval inspection process; improve communication and cooperation among CBER, FDA field offices, and industry representatives associated with biotechnology manufacturing processes; and improve levels of consumer protection.

DATES: The meeting will be held on Tuesday, September 15, 1998, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the Los Angeles District Office, Food and Drug Administration, 19900 MacArthur Blvd., suite 300, Irvine, CA 92715.

FOR FURTHER INFORMATION CONTACT: Mark Roh (HFR–PA17), Pacific Regional Office, Food and Drug Administration, 1301 Clay St., suite 1180–N, Oakland, CA 94612, 510–637–3980, fax 510–637–3977, e-mail ''mroh@ora.fda.gov''.

REGISTRATION: Send registration information (including name, title, firm name, address, telephone, and fax number), via fax or e-mail to the contact person by Friday, September 4, 1998.

If you need special accommodations due to a disability, please contact the contact person at least 7 days in advance.

SUPPLEMENTARY INFORMATION: Manufacturers in the Pacific Region, who employ biotechnology in the production of FDA regulated products will be able to identify and evaluate opportunities for implementing a partnership approach with FDA. In the Federal Register of April 20, 1995 (60 FR 19753), FDA announced that a series of Grassroots Regulatory Partnerships Meetings would be held to further the President's initiative. FDA's goal at this meeting is to ''listen'' to concerns and ideas of the biotechnology industry, and to identify next steps for the agency.

There is no registration fee for this meeting. However, registration is required. Early registration is recommended because of space limitations and the need to send information about the meeting format to each registrant. You will be asked to identify the subject area breakout session in which you prefer to participate. To permit the greatest number of firms to attend, each company registering for this meeting should send no more than two representatives.

Dated: July 29, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–20955 Filed 8–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0389]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 11, 1998 (63 FR 32102), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). 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 now approved the information collection and has assigned OMB control number 0910–0374. The approval expires on November 30, 1998.

Dated: July 29, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–20957 Filed 8–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0519]

Draft Modifications To Devices Subject To Premarket Approval—The PMA Supplement Decision Making Process; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Modifications To Devices Subject To Premarket Approval—The PMA Supplement Decision Making Process.'' This draft guidance is neither final nor is it in effect at this time. The draft guidance includes a flowchart model that could be used by premarket approval application (PMA) holders in their decisionmaking to analyze whether certain changes in a device affect the safety or effectiveness of the device, and therefore, require submission of a new PMA, PMA supplement, alternate submission to a PMA supplement, annual report or documentation in the PMA holders' files on the device.

DATES: Written comments concerning this draft guidance must be received by November 4, 1998.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Modifications To Devices Subject To Premarket Approval—The PMA Supplement Decision Making Process'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Written comments concerning this draft guidance must be submitted to the Dockets Management Branch, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Kathy M. Poneleit, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I.Background

In January 1997, FDA released a guidance document entitled ''Deciding When to Submit a 510(k) for a Change to an Existing Device.'' This document was an effort to clarify current practice and FDA's expectations regarding the process used to determine whether a change to a class I or II device or to a class III device for which premarket approval had not yet been required under section 515(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)), required submission of a new 510(k).

Class III devices subject to premarket approval requirements under section 515 of the act were not addressed by that document and the PMA regulation, part 814 (21 CFR part 814), provides only general criteria for determining whether a PMA supplement is required for a particular device change. FDA's process of developing specific guidance on submission of PMA supplements coincided with FDA reengineering activities, including the CDRH effort to streamline the PMA supplement process within the context of the existing premarket approval regulation (part 814).

The draft guidance has been developed to aid PMA holders who

intend to modify their device and are in the process of deciding the type of documentation and/or submission necessary for that particular modification. The draft guidance concerning changes to an existing device is intended to complement, not supplant, existing guidances on the premarket approval process. It is not intended to apply to combination products, such as drug/device or biologic/device combinations.

This draft guidance incorporates three separate flowcharts for in vitro diagnostic devices (IVD's). These flowcharts cover changes in technology or performance, change assessment, and materials changes for IVD's. This draft guidance applies to in vitro diagnostic devices regulated by the CDRH and application of this guidance to in vitro diagnostic devices regulated under premarket approval by the Center for Biologics Evaluation and Research (CBER) should be discussed with CBER.

The types of modifications addressed in the draft guidance include changes in device design, device labeling, device materials, and the manufacturing process for the device. This draft guidance can also be applied to situations when a legally marketed device is the subject of a recall and a change is indicated to assure the safety and effectiveness of the device.

When contemplating changes to any approved device, PMA holders should use the flowchart for ''each'' type of proposed change. In those circumstances where the proposed change is not addressed in the flowchart or in a device-specific guidance document, PMA holders are encouraged to contact the Office of Device Evaluation (ODE) in CDRH for additional information.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on modifications to devices which are subject to premarket approval. This draft guidance does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive ''Modifications To Devices Subject To Premarket Approval—The PMA Supplement Decision Making Process'' via your fax machine, call the CDRH Facts–On–Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (855) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes ''Modifications To Devices Subject To Premarket Approval—The PMA Supplement Decision Making Process,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

IV. Comments

Interested persons may, on or before November 4, 1998, submit to Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 22, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–20958 Filed 8–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2567]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; Title of Information Collection: Statement of Deficiencies and Plan of Correction and Supporting Regulations in 42 CFR 488.18, 488.26, and 488.28; Form No.: HCFA–2567 (OMB# 0938–0391); Use: This Paperwork package provides information regarding the form used by the Medicare, Medicaid, and the Clinical Laboratory Improvement Amendments (CLIA) programs to document a health care facility's compliance or noncompliance (deficiencies) with regard to the Medicare/Medicaid Conditions of Participation and Coverage, the requirements for participation for Skilled Nursing Facilities and Nursing Facilities, and for certification under

CLIA. This form becomes the evidentiary basis for HCFA certification decisions (including termination or denial of participation), and the form of public disclosure; Frequency: Biennially and Annually; Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, local or tribal government; Number of Respondents: 60,000; Total Annual Responses: 60,000; Total Annual Hours: 120,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 31, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–21047 Filed 8–5–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2030–N]

RIN 0938–AJ13

Medicaid Program; Decision on Funding for the AIDS Healthcare Foundation START Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the award of a grant in the sum of $1 million to the AIDS Healthcare Foundation of Los Angeles for a demonstration project entitled, ''START PROGRAM: Success Through Anti-Retroviral Therapy.''

FOR FURTHER INFORMATION CONTACT: Wayne Smith, Ph.D., Center for Medicaid and State Operations, (410) 786–6762.

SUPPLEMENTARY INFORMATION: This award is made based on language in H.R. Conf. Rept. 105–390 at 86 (1997) attendant to our agency's administrative budget authorization for Fiscal Year 1998 that directed us to devote ''$1,000,000 within research to conduct a demonstration of residential treatment facilities at the AIDS Healthcare Foundation in Los Angeles.''

The START program is a 4- to 6-week residential program designed to increase the ''adherence'' to HIV and AIDS medication regiments of individuals at high risk for non-adherence, or a history of non-adherence. The goals of the program are: (1) To educate participants and influence positive ''medication-taking'' habits and behaviors whereby they internalize successful treatment adherence strategies, (2) to assist participants in achieving and maintaining long term adherence, (3) to monitor and reinforce participants' success by analyzing viral load and CD4 counts, and (4) to provide ancillary support to assure successful compliance.

The purpose of this grant is to demonstrate how compliance with the complicated medication regimen for people living with HIV and AIDS who are at high risk of noncompliance can be increased by a short-term residential treatment program. The START program provides these individuals with a sheltered, structured environment in which the regimen can be established and residents can be counseled and supported.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 30, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–20953 Filed 7–31–98; 4:30 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal to be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information collection; correction.

SUMMARY: The U.S. Fish and Wildlife Service published a document in the **Federal Register** of July 28, 1998, concerning the submission of an information collection renewal to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act. The document contained incorrect information concerning coverage of the information collections by the Privacy Act.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Mullin at (703) 358–2287, or electronically to rmullin@fws.gov.

Correction

In the **Federal Register** issue of July 28, 1998 (63 FR 40303), on page 40305, in the first column, correct the last sentence of the first paragraph to read:

The information collections in this program will be part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: July 29, 1998.

Daniel M. Ashe,

Assistant Director for Refuges and Wildlife.

[FR Doc. 98–20916 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Prepare Comprehensive Conservation Plans

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare Comprehensive Conservation Plans.

SUMMARY: This notice advises that the Fish and Wildlife Service intends to gather information necessary to prepare Comprehensive Conservation Plans and associated environmental documents for Medicine Lake National Wildlife Refuge Complex in northeastern Montana, Red Rock Lakes National Wildlife Refuge in southwestern Montana, and Crescent Lake and North Platte National Wildlife Refuges in western Nebraska. The Medicine Lake NWR Complex includes the Medicine Lake National Wildlife Refuge, Lamesteer National Wildlife Refuge, and the Northeast Montana Wetland Management District. The Service is furnishing this Notice in compliance with Service CCP policy to advise other agencies and the public of its intentions and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Written comments should be received by September 8, 1998.

ADDRESSES: Comments and requests for more information regarding Medicine Lake NWR should be sent to Allison Banks. Planning Team Leader, Division of Realty, P.O. Box 25486, DFC, Denver, CO 80225. Comments and requests for more information regarding Red Rock Lakes, Crescent Lake, and North Platte NWRs should be sent to Carol Taylor, Chief, Land Acquisition and Refuge Planning Branch, Division of Realty, P.O. Box 25486, DFC, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Allison Banks, Planning Team Leader, Division of Realty, P.O. Box 25486, DFC, Denver, CO 80225 (Medicine Lake NWR). Carol Taylor, Chief, Land Acquisition and Refuge Planning Branch, Division of Realty, P.O. Box 25486, DFC, Denver, CO 80225 (Red Rock Lakes, Crescent Lake, and North Platte NWRs).

SUPPLEMENTARY INFORMATION: The Service has initiated Comprehensive Conservation Planning for the Medicine Lake NWR Complex. Red Rock Lakes NWR, Crescent Lake NWR, and North Platte NWR.

Each National Wildlife Refuge has specific purposes for which it was established and for which legislation was enacted. Those purposes are used to develop and prioritize management goals and objectives within the National Wildlife Refuge System mission, and to guide which public uses will occur on the Refuge. The planning process is a way for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important, wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with each National Wildlife Refuge's establishing purposes and the mission of the National Wildlife Refuge System.

The Medicine Lake NWR Complex consists of Medicine Lake NWR, Lamesteer NWR, and the Northeast Montana WMD. The Complex lies within the mixed grass glaciated prairie pothole ecosystem in Sheridan, Roosevelt, Daniels, Richland, Dawson, and Wilbaux Counties of northeast Montana. Medicine Lake NWR (approximately 31,660 acres) was established to protect breeding habitat for migratory birds and other wildlife in 1935. The 11,360 acre Medicine Lake Wilderness Area was designated by Congress in 1976. Lamesteer NWR, near Wilbaux, Montana, is an 800-acre easement refuge. The Northeast Montana WMD consists of fee Waterfowl Production Areas (11,772 acres), wetland easements (7,967 acres), and grassland easements (8,366 acres). Public use opportunities include wildlife observation, photography, hunting, and fishing.

Cresent Lake NWR (45,985 acres) was established to protect breeding habitat for migratory birds and other wildlife in 1931. The Refuge is located in Garden County, 28 miles north of Oshkosh, Nebraska within the western portion of the Nebraska Sandhills. The Refuge provides breeding and migration habitat for Central Flyway waterfowl, other migratory birds, and supports significant populations of the endangered blowout penstemon. Public use opportunities include wildlife observation, photography, environmental education, hunting, and fishing on the Refuge.

North Platte NWR (2,909 acres) was established to provide breeding and migratory habitat for native birds and for use by the Bureau of Reclamation in 1916. The Refuge provides significant migration and wintering habitat for waterfowl in the Chain of Lakes area in western Nebraska (Lake Minatare, Winters Creek Lake, and Lake Alice). The Refuge also provides year-round resident wildlife habitat on Stateline Island in the North Platte River. Public use opportunities include wildlife observation, photography, fishing, and environmental education.

Red Rock Lakes NWR (44,483 acres) was established in 1935 to protect habitat for migratory birds and other wildlife with emphasis on the trumpeter swan. Located in Beaverhead County, Montana, the Refuge is primitive and highly diverse, and includes meadows, sagebrush grasslands, coniferous forests, and two large lake and marsh complexes. In 1976, a 32,350 acre portion of the Refuge was designated as Wilderness. The Refuge is also designated as a National Natural Landmark. Wildlife observation, photography, hunting, fishing, and camping are available on the Refuge.

The Service will conduct a comprehensive conservation planning process that will provide opportunity for Tribal, Federal, State and local governments, agencies, organizations, and the public to participate in issue scoping and public comment. The Service is requesting input on issues, concerns, ideas, and suggestions for the future management of the National Wildlife Refuges included in this notice. Anyone interested in providing input is invited to respond to the following three questions:

(1) What makes the Refuge (Medicine Lake, Crescent Lake, North Platte, Red Rock Lakes, or any specific unit) special or unique for you?

(2) What concerns or issues do you want to see addressed in the Comprehensive Conservation Plans?

(3) What improvements would you recommend for the Refuge (Medicine Lake, Crescent Lake, North Platte, Red Rock Lakes, or any specific unit)?

The Service has provided the above questions for your optional use; no requirement to provide information to the Service exists. The Planning Team developed these questions to facilitate gathering more information about individual issues and ideas concerning these Refuges. An opportunity will be given to the public to provide input at open houses to scope issues and concerns (schedules can be obtained from the Planning Team Leaders at the above addresses). Comments may also be submitted anytime during the planning process by writing to the above addresses. Comments received by the Planning Team will be used as part of the planning process; individual comments will not be referenced in our reports or directly responded to.

The environmental review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

All comments received from individuals on FWS NEPA documents become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)], and other FWS and Departmental policy and procedures. When requested, FWS generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the commentator's name, address, or other identifying information. Such comments may be submitted anonymously to the FWS.

We estimate that the draft CCP's and environmental documents for each Refuge will be available for review in September 1999.

Dated: July 30, 1998.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 98–21014 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service; Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

Permit No. 844030.

Applicant: Eda C. Eggeman, Redding, California.

The applicant requests a permit to take (harass by survey; capture and release; collect and sacrifice specimens) the vernal pool tadpole shrimp (*Lepidurus packardi*) and the Conservancy fairy shrimp (*Branchinecta conservatio*) in conjunction with ecological research in Tehama County, California, for the purpose of enhancing their survival.

Permit No. 687242.

Applicant: Michael Morrison, Sacramento, California.

The applicant requests a permit to take (capture and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with surveys in Solano County, California, for the purpose of enhancing its survival.

Permit No. 844028.

Applicant: A. A. Rich and Associates, San Anselmo, California

The applicant requests a permit to take (harass by survey; capture, handle, and release) the Owens pupfish (*Cyprinodon radiosus*), Owens tui chub (*Gila bicolor snyderi*), and tidewater goby (*Eucyclogobius newberryi*) in conjunction with scientific research throughout each species' range in California and Nevada, for the purpose of enhancing their survival.

Permit No. 789254.

Applicant: Elizabeth Copper, Coronado, California

The applicant requests an amendment of her permit to take (harass) the California least tern (*Sterna antillarum browni*) in conjunction with determining the feasibility of salvaging abandoned eggs and augmenting limited populations in San Diego County, California, for the purpose of enhancing its survival.

Permit No. 844029.

Applicant: Joseph S. Drennan, San Anselmo, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax trailli extimus*) in conjunction with surveys in California, Nevada, and Arizona, for the purpose of enhancing its survival.

Permit No. 844475.

Applicant: Shapiro and Associates, Inc., Portland, Oregon.

The applicant requests a permit to take (harass by survey) the Lost River sucker (*Deltistes luxatus*) and the shortnose sucker (*Chasmistes brevirostris*) in conjunction with surveys in the waters of the Caledonia Marsh, Klamath County, Oregon, for the purpose of enhancing their survival.

Permit No. 844645.

Applicant: Rick Rogers, Sherwood Oaks, California.

The applicant requests a permit to take (harass by survey) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in San Bernardino and Riverside counties, California, for the purpose of enhancing its survival.

Permit No. 844729.

Applicant: Santa Ana Botanic Garden, Claremont, California.

The applicant requests a permit to remove and reduce to possession *Astragalus albens, Oxytheca parishii* var. *goodmaniana, Eriogonum ovalifolium* var. *vineum, and Lesquerella kingii* spp. *bernardina* in conjunction with population studies throughout San Bernardino County, California, for the purpose of enhancing their survival.

Permit No. 838742.

Applicant: Michelle Dohrn, Chambers Group, Irvine, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax trailli extimus*) in conjunction with surveys in Los Angeles, Orange, San Diego, Ventura and Riverside Counties, California, for the purpose of enhancing its survival.

Permit No. 842199.

Applicant: Keith A. Greer, San Diego, California.

The applicant requests a permit to take (harass by survey, capture and release, collect and sacrifice voucher specimens) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) in San Diego County, California, in conjunction with surveys for the purpose of enhancing their survival.

Permit No. 797266.

Applicant: Dr. Douglas Alexander, Chico, California.

The applicant requests an amendment to his permit to take (collect and sacrifice specimens, collect vernal pool soil core samples) the Conservancy fairy shrimp (*Branchinecta conservatio*) and the vernal pool tadpole shrimp (*Lepidurus packardi*) in Tehama and Butte Counties, California, in conjunction with food habits analysis and scientific research for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received on or before September 8, 1998.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: July 31, 1998.

Donald V. Friberg,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–21012 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1540–01 24 1A]

OMB Approval No. 1004–0009; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been

submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On May 14, 1998, BLM published a notice in the **Federal Register** (63 FR 26820) requesting comments on this proposed collection. The comment period closed on July 13, 1998. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related documents and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond within 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Desk Officer (1004–0009), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of BLM, including whether or not the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Land Use Application and Permit, Form 2920–1.

OMB Approval Number: 1004–0009.

Abstract: The regulations at 43 CFR part 2920 provide for non-Federal use of BLM-administered land by means of lease or permit. Uses include agricultural, trade or manufacturing concerns and businesses, such as outdoor recreation concessions. BLM will determine the validity of uses proposed by private individuals and other qualified proponents from information provided by those proponents on the Land Use Application and Permit form.

Frequency: Once.

Description of Respondents: Individuals, State and local governments, and other qualified proponents applying to use BLM-administered lands by means of lease or permit.

Estimated Completion Time: Either 30 minutes (for permits) or 121 hours (for complex leases).

Annual Responses: 620.

Annual Burden Hours: 5955.

Bureau Clearance Officer: Carole Smith, (202) 452–0367.

Dated: July 22, 1998.

Carole J. Smith,

Bureau of Land Management Information Clearance Officer.

[FR Doc. 98–21052 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–830–1030–02–24 1A]

OMB Approval Number 1004–NEW; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) On January 22, 1998, BLM published a notice in the **Federal Register** (63 FR 3343) requesting comment on this proposed collection. The comment period ended on March 22, 1998. BLM received one comment from the pubic in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–XXXX), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Office (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: BLM's Generic Customer Satisfaction Surveys, OMB approval number: 1004–NEW.

Abstract: BLM is proposing a new information collection for determining the satisfaction of its customers with its programs and services. A currently approved collection (1004–0172) covered all survey instruments, both customer comment cards and telephone surveys, and the use of focus groups to determine what questions to ask and comments to solicit. The new collection will concern only customer surveys specific to programs. The anticipated programs/customers for survey are: Wild Horse and Burro; Grazing Permittees; Information Access Center Users; Land Management Transactions; Mining Claimants; Oil and Gas Lessees; Recreation and Education Users; Recreation permits; Rights-of -Way Applicants; Fire and Aviation; and Cadastral Survey. These data will be used to identify: (1) Service needs of customers; (2) strengths and weaknesses of services; (3) ideas or suggestions for improvement of service from BLM customers; (4) barriers to achieving customer services standards; and (5) changes to customer service standards.

Bureau Form Number: Not applicable.

Frequency: One.

Description of Respondents: General customers (i.e., rights-of-way, land management transactions, recreational permits, mining claim recordation, oil and gas leases, information access centers, recreational and educational users, and grazing permits and leases) of the BLM.

Annual Responses: 13,000.

Annual Burden Hours: 3,250, or 0.25 hours (15 minutes) per response.

Collection Clearance Officer: Carole Smith, 202–452–0367.

Dated: July 27, 1998.

Carole Smith,

Bureau of Land Management, Information Clearance Officer.

[FR Doc. 98–21053 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Order Extending Temporary Closure to Non-Authorized Use of Certain Public Lands in Ward Valley, San Bernardino County, California

AGENCY: Bureau of Land Management, Needles Field Office.

ACTION: Order extending for one year the temporary order of closure to non-authorized uses of certain public lands in Ward Valley.

SUMMARY: BLM is extending for one year the initial temporary closure of approximately 2,000 acres within Ward Valley, California, as published in the **Federal Register** on January 29, 1998, 63 FR 4467. The initial closure order was effective February 13, 1998, and was effective for a period of six months from that date. The lands involved in this extension and the scope of the closure are not changed.

EFFECTIVE DATE: By this extension, the closure order will continue in effect and will remain effective until August 13, 1999.

SUPPLEMENTARY INFORMATION: This order extending the closure to non-authorized uses of the Ward Valley lands is necessary to facilitate BLM management of authorized activities on the Ward Valley site, protect the desert tortoise and its critical habitat, and prevent unnecessary damage to sensitive natural resources. In light of questions raised regarding the authority of the California Department of Health Services to purchase the site, actions to proceed with on-site testing described in the initial order of closure will not go forward at present. However, lifting the closure would increase the likelihood of greater public use and the potential for adverse impacts from uncontrolled day and overnight activities. Such uncontrolled activities could generate additional traffic and litter; increase risk of fire, dust, and noise; adversely affect the desert tortoise and its critical habitat as well as other wildlife species and their habitats; damage vegetation; and pose additional environmental and safety problems. Therefore, continued closure of the affected lands would protect sensitive natural resources while allowing authorized users to continue to utilize the site under controlled conditions.

FOR FURTHER INFORMATION CONTACT: Molly Brady, Needles Field Office Manager, U.S.D.I., Bureau of Land Management, Needles Resource Area, 101 West Spikes Road, Needles, California 92363, tel: (760) 326–7000.

Approved.

Ed Hastey,

BLM State Director, California State Office.

[FR Doc. 98–21011 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–08–1320–01; MTM 88405]

Notice of Coal Lease Application—MTM 88405—Spring Creek Coal Company

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: This is notice of Spring Creek Coal Company's coal lease application MTM 88405 for certain coal resources within the Powder River Coal Region.

The lands included in Coal Lease Application MTM 88405 are located in Big Horn County, Montana, and are described as follows:

T. 8 S., R. 39 E., P.M.M.
Sec. 13: SW¼SW¼SW¼, SW¼SE¼SW¼SW¼
Sec. 14: S½SW¼NE¼SE¼, S½NE¼SE¼SE¼, NW¼NE¼SE¼SE¼, S½SE¼SE¼, NW¼SE¼SE¼
Sec. 23: NE¼NE¼, SE¼SW¼NW¼NE¼, N½SW¼NW¼NE¼, E½NW¼NE¼
Sec. 24: NW¼SE¼NW¼NW¼, N½SW¼NW¼NW¼, N½NW¼NW¼
150.00 acres

Spring Creek Coal Company is the surface owner of all of the lands applied for.

The 150.00-acre tract contains an estimated 15.4 million tons of recoverable coal reserves. The area is bordered by the Spring Creek Mine to the South.

The application will be processed in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181, 35 seq.), and the implementing regulations at 43 CFR 3400. A decision to allow leasing of the coal resources in said tract will result in a competitive lease sale to be held at a time and place to be announced through publication pursuant to 43 CFR 3422.

SUPPLEMENTARY INFORMATION: Spring Creek Coal Company is the lessee and operator of Coal Lease MTM 069782 at the Spring Creek Mine. The proposed lease area adjoins the current lease to the North and contains approximately 105 acres within the approved mine permit area.

On June 1, 1998, Spring Creek Coal Company received Federal Coal Exploration License MTM 87910 from the BLM to conduct drilling on lands contained within the Spring Creek coal lease application tract. Data from the completed drilling program conducted under MTM 87910, and preceding drilling programs, will be or has been forwarded to the BLM, as required by the terms of the exploration licenses.

Due to its coal reserve base and configuration, the Spring Creek lease application tract is a logical step to extend the life of the Spring Creek Mine. With the current permitted reserves of coal, the current level of production at the Spring Creek Mine can be maintained for approximately 19 additional years.

The area applied for would be mined as an extension of the Spring Creek Mine and would utilize the same methods as those currently being used. The lease being applied for can extend the life of the mine by about 2 years and enable recovery of coal that might never be mined if not mined as a logical extension of current pits at the Spring Creek Mine.

Notice of Availability: The application is available for review between the hours of 9 a.m. and 4 p.m. at the Bureau of Land Management, Montana State Office, 222 North 32nd Street, Billings, Montana 59101, and at the Bureau of Land Management, Miles City Field Office, whose address is Garryowen Road, Miles City, Montana 59103, between the hours of 7:45 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Rebecca Good, Coal Coordinator, at telephone (406) 255–2828, Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: July 27, 1998.

Janet Singer,

State Director.

[FR Doc. 98–20961 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1320–00 [WYW139975]]

Ark Land Company Coal Lease Application, Carbon County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement (DEIS) and Notice of Public Hearing.

SUMMARY: Pursuant to 40 CFR 1500–1508, the Bureau of Land Management (BLM) announces the availability of a

DEIS for Ark Land Company Coal Lease Application Serial Number WYW139975 in the Green River-Hams Fork Coal Production Region of Wyoming and the scheduled date and place for a public hearing pursuant to 43 CFR 3425.4. The purpose of the hearing is to solicit comments on the DEIS and on the fair market value (FMV) and Maximum Economic Recovery (MER) of the proposed lease tract.

DATES: The public hearing will be held at 7 p.m. MDT, on September 9, 1998, at the Town of Hanna Administrative Office, 301 S. Adams, Hanna, Wyoming. There will be an informal session starting at 6 p.m. MDT, before the formal hearing, to answer questions regarding the Ark Land Company coal lease application and the coal leasing process. Written comments on the DEIS will be accepted for 60 days following the date the Environmental Protection Agency (EPA) publishes their Notice of Availability in the **Federal Register**. We expect the EPA notice will be published on August 14, 1998.

ADDRESSES: Please address questions, comments, or requests for copies of the DEIS to Area Manager, Great Divide Resource Area Office, Bureau of Land Management, P.O. Box 2407, 1300 North Third Street, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Interested parties may direct questions, concerns, or obtain further information by contacting Karla Swanson, Great Divide Resource Area Manager, Brenda Vosika Neuman, Project Team Leader, or John Spehar, Planning and Environmental Coordinator, at the Bureau of Land Management Office, P.O. Box 2407, 1300 N. Third Street, Rawlins, Wyoming 82301, or by telephone at: (307) 328–4200.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of 43 CFR 3425.1, Ark Land Company, St. Louis, Missouri, filed an application with the BLM on September 20, 1996, to obtain a Federal coal lease on 4145.15 acres of Federal coal lands located in Carbon County, Wyoming.

The lease application area is located in the Carbon Basin, approximately 40 miles east of the town of Rawlins, 5 miles northwest of the town of Elk Mountain, 13 miles southwest of the town of Medicine Bow, and 12 miles southeast of the town of Hanna. The BLM has recommended that 1280 acres containing approximately 59 million tons of in-place coal reserves be included in the lease tract to allow a reasonable underground mine plan with enough reserves for a new mine start. The BLM has also recommended that 190 acres with no in-place coal reserves be removed from the original lease application.

One hundred and sixty acres of land were eliminated from the lease application because they lie outside of the outcrop line and contain no Hanna Formation coals. Thirty acres of land located in the Medicine Bow River floodplain were determined to be unsuitable for coal mining. The original lease application was for the following lands:

Sixth Principal Meridian

T. 20 N., R. 79 W.,
Sec. 6, lot 5.
T. 20 N., R. 80 W.,
Sec. 4, lots 1, 2, and 3;
Sec. 6, lots 1 and 2, and SE1/4;
Sec. 12, N½NW¼ and NW¼NE¼.
T. 21 N., R. 79 W.,
Sec. 20, N½ and SW¼;
Sec. 28, NW¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32, NW¼.
T.21 N., R. 80 W.,
Sec. 26, All;
Sec. 28, W½ and SE¼;
Sec. 32, E½ and SE¼SW¼;
Sec. 34, All.

The lands described contain 4145.15 acres, more or less.

The BLM has recommended that the following lands be excluded from the application:

Sixth Principal Meridian

T. 20 N., R. 80 W.,
Sec. 12, S½NW¼NE¼ and SE¼NE¼NW¼.
T. 21 N. R. 79 W.,
Sec. 28, NW¼.

The lands described contain 190 acres, more or less.

The BLM has recommended that the following additional lands containing approximately 59 million tons of in-place coal reserves be included in the application:

Sixth Principal Meridian

T. 21 N., R. 80 W.,
Sec. 22, All;
Sec. 24, All.

The lands described contain 1280 acres, more or less. The tract, as amended by the BLM, contains a total of 5235.15 acres and approximately 149.7 million tons of in-place coal. On May 13, 1998, Ark Land Company agreed with BLM's recommendations and revised their original lease application to reflect the changes stated above. All lands included in the lease application have been evaluated in the document ''Environmental Assessment for Coal Planning Decisions in the Carbon Basin Area of the Great Divide Resource Area, BLM 1998''. BLM has determined these lands are suitable for further consideration for coal leasing and development.

Coal mining would be conducted by Arch of Wyoming, Inc. (Arch), an affiliate of Ark Land Company, if it is successful in obtaining a Federal coal lease in the proposed project area. Arch has operated coal mines in the Hanna Basin Region of Carbon County since 1972. The depletion of recoverable coal reserves in the Hanna Basin has led Arch to identify additional (local) coal resources in the Carbon Basin area that could utilize the existing infrastructure and meet existing contracts or long-term commitments. The Carbon Basin area, an area with a mixture of private, State, and Federal lands, is close to the Hanna Basin coal fields and provides a logical continuation of the Hanna Basin mining operations.

The DEIS analyzes two alternatives. The No Action Alternative is a ''no Federal leasing'' alternative rather than a ''no mining'' alternative. The ''no mining'' alternative is not analyzed in detail because 79 percent of the surface-minable coal within the coal project area is privately owned and BLM believes that the private surface coal could be economically mined even if the Federal coal is not leased. However, if no Federal coal were leased, the non-Federal underground coal reserves would become uneconomical to mine due to the checkerboard pattern of mineral ownership existing in the center of the basin. Under the Proposed Action, the BLM preferred alternative, the BLM would hold a competitive lease sale for surface-minable and underground-minable Federal coal. The Proposed Action includes the analysis of leasing Federal coal for both surface (Elk Mountain) and underground (Saddleback Hills) mining operations and examines 10 options for transporting coal to processing/loadout facilities.

The Office of Surface Mining (OSM) is a cooperating agency in the preparation of the EIS. OSM is the Federal agency that administers surface coal mining under the Surface Mining Control and Reclamation Act of 1977.

Freedom of Information

Comments, including names and street addresses of respondents, will be available for public review at the addresses listed above during regular business hours (7:45 a.m.–4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the Final EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment.

Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: July 30, 1998.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 98–21013 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–066–1220–00–21 1A]

Notice To Limit Off Road Vehicle Use of Public Lands; Wood River Ranch Sikes Act Management Area, Montana

AGENCY: Bureau of Land Management, Lewistown Field Office.

ACTION: Notice to limit off-road vehicle use of public lands.

SUMMARY: Upon publication of this notice in the **Federal Register**, the Bureau of Land Management is restricting all motorized vehicle traffic to the designated county and BLM roads/trails on all lands within the property commonly known as the Richard E. Wood Watchable Wildlife Area or Wood River Ranch Sikes Act Management Area. This property includes approximately 2,000 acres and is located in Chouteau County, Montana and is further described as follows:

LOCATION: This property is located south of US Highway 87, 0.4 mile south of Loma, MT and 10.5 miles northeast of Fort Benton, MT. The property starts at the confluence of the Marias and Missouri Rivers, and extends upstream on the Missouri River for 3.0 miles.

Legal Location

T. 25 N, R. 9 E., P.M.M.
Section 13: SE¼, S½NE¼, E½SW¼, S½SE¼NW¼, W¼SW¼
Section 23: N½NE¼, SE¼NW¼
Section 24: N¼N½, SE¼NW¼, NE¼SW¼
T. 25 N., R 10 E., P.M.M.
Section: NW¼, SW¼ West of Missouri River
Section: NW¼ West of Missouri River, S½, NE¼, SE¼, E½SW¼
Section: S½, S½N½
Section: W½SW¼
Section: W½NE¼, NE¼NW¼, NW¼SE¼, S½NW¼, N½SW¼

All vehicle traffic is restricted to designated county and BLM roads/trails. However, this would not restrict vehicles from parking within 50 feet of designated roads on established grass or grain stubble.

This restriction is being implemented to protect public resources and prevent the spread of noxious weeds. This restriction will remain in place until March 1, 1999, unless ORV restrictions are made permanent sooner.

Persons exempted from such restrictions are all MT Fish, Wildlife and Parks, and BLM personnel during the performance of their duties on described lands. Also exempted are cooperators in the management of agricultural lands, at such time as they are working on described lands to prepare fields, plant crops, control weeds, or harvest crops.

Copies of maps showing open roads are posted at various locations in Loma, on the property, and at BLM offices in Havre, Fort Benton and Great Falls.

Any persons in violation of these off-road vehicle regulations will be subject to all applicable penalties, including fines not to exceed $1,000 and/or one year imprisonment.

DATES: These restrictions will become effective upon publication in the **Federal Register** and last until March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Assistant Field Manager, Havre Field Station, 1704 2nd Street West, Havre, MT (406) 265–5891.

Dated: July 21, 1998.

David L. Mari,

Field Manager.

[FR Doc. 98–21056 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–931–1430–01; MIES–047394]

Public Land Order No. 7353; Revocation of Executive Orders Dated April 3, 1847 and December 9, 1852, Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two Executive Orders insofar as they affect 10.54 acres of public land withdrawn for use by the United States Coast Guard for lighthouse purposes. The land is no longer needed for the purpose for which it was withdrawn.

EFFECTIVE DATE: September 8, 1998.

FOR FURTHER INFORMATION CONTACT: Ed Ruda, Natural Resource Specialist, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, 703–440–1671.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Orders dated April 3, 1847 and December 9, 1852, which reserved public land for use for lighthouse purposes, are hereby revoked insofar as they affect the following described land:

Michigan Meridian

T. 58 N., R. 30 W.,
(a) sec. 6, lots 5 (6.54 acres) and 6 (1.89 acres);
(b) sec. 6, lot 7 (2.11 acres).

The area described contains 10.54 acres in Keweenaw County.

2. The land described in paragraph 1(a) has been conveyed out of Federal ownership with no mineral reservations.

3. The land and minerals described in paragraph 1(b) have been determined to be ''property'' within the meaning of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 472 (1994), and will not be returned to the Bureau of Land Management.

Dated: July 22, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–21050 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–1430–00; COC–61230]

Notice of Realty Action; Recreation and Public Purposes Act Classification and Application for Conveyance for Public Purposes, COC–61230; Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: The following public lands in San Juan County, Colorado have been examined and are suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purposes Act (R&PP), as amended (43 U.S.C. 869 *et seq.*). The purpose of the classification and application for conveyance is to allow for the use of the property described herein for an expansion of a cemetery by the Town of Silverton, Colorado.

New Mexico Principal Meridian

T. 41 N., R. 7 W.,

Tract 38, lots AA and E.

containing 6.13 acres more or less.

A lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, if issued, would be subject to valid existing rights and the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit written comments regarding the classification and proposed lease or conveyance of the lands to the District Manager, Montrose District Office, 2465 South Townsend, Montrose, CO 81401.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for cemetery purposes. Comments on the classification are restricted to whether the land is suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development submitted by the Town of Silverton.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR MORE INFORMATION CONTACT: Tom Hurshman, phone (970) 240–5345. Documents pertinent to this proposal may be reviewed at the Montrose District Office, 2465 South Townsend, Montrose, Colorado, 81401.

Dated: July 29, 1998.

Jerry Jones,

Acting District Manager.

[FR Doc. 98–21048 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–60836, N–60970]

Termination of Land Exchange Segregation; Clark County, NV

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This action terminates the land exchange segregation dated July 23, 1997 for N–61855. The lands are being made available for Recreation and Public Purpose (R&PP) Leases to Clark County for park sites under N–60836 and N–60970 published in the **Federal Register** on July 8, 1998.

EFFECTIVE DATE: August 6, 1998.

FOR FURTHER INFORMATION CONTACT: Cheryl Frassa-McDonough (702) 647–5088.

SUPPLEMENTARY INFORMATION: Upon notation to the public land office records, on July 23, 1997, the lands were segregated for exchange purposes. The lands became segregated from all other forms of appropriation under the public land laws including location and entry under the mining laws. The lands are needed for R&PP Leases. The segregation is hereby terminated on the following described lands:

N–60836

Mount Diablo Meridian

T. 22 S., R. 61 E.,
Sec. 28, Lots 1–4, 14–16, 18–21, 31–34.
Approximately 37.5 acres

N–60970

Mount Diablo Meridian

T. 22 S., R. 60 E.,
Sec. 5, NE¼SW¼.
Approximately 40.0 acres
The areas described aggregate 77.5 acres.

The land is hereby made available for Recreation & Public Purposes. The land will remain closed to surface entry and mining due to an overlapping segregation.

Dated: July 30, 1998.

Rex Wells,

Assistant Field Office Manager, Las Vegas, NV.

[FR Doc. 98–21010 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1430–00; OR–00–0273]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Oregon

July 29, 1998.

AGENCY: Prineville District, Deschutes Resource Area, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Deschutes County, Oregon have been examined and found suitable for classification for lease or conveyance to the City of Redmond under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Redmond proposes to use the lands for a Water Pollution Control Facility.

Williamette Meridian

T. 14 S., R. 12 E.,
Sec. 24, E½NW¼, W½NE¼
Containing 35.14 acres, more or less

The lands are not needed for Federal purposes. The lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease or patent, when issued, will be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Prineville District, 3050 NE Third, Prineville, Oregon 97754.

Upon publication of this notice in the **Federal Register,** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested persons may submit comments regarding the proposed lease or classification of the lands to the District Manager, Prineville District

Office, P.O. Box 550, Prineville, Oregon 97754.

Classification Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Water Pollution Control Facility.

Any adverse comments will be reviewed by the State Directory. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

Dated: July 29, 1998.

James L. Hancock,

District Manager.

[FR Doc. 98–21051 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–069–1220–00]

Supplementary Rules for the Amboy Crater National Natural Landmark/Area of Critical Environmental Concern

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of supplementary rules for the Amboy Crater National Natural Landmark/Area of Critical Environmental Concern.

SUMMARY: To implement decisions regarding the management of valuable, fragile and limited natural resources and to provide for public enjoyment and the safety of visitors to such resources, located at the Amboy Crater National Natural Landmark/Area of Critical Environmental Concern.

EFFECTIVE DATE: August 1, 1998. To remain in effect until the completion of Land Use, Recreation and Route Designation plans.

FOR FURTHER INFORMATION CONTACT: Michael S. Dodson, Ranger, at (760) 326–7027 or Lesly Smith, Outdoor Recreation Planner, at (760) 326–7031, Needles Field Office, 101 West Spikes Road, Needles, CA 92363.

SUPPLEMENTARY INFORMATION: To protect valuable, sensitive and fragile natural resources and to provide for public enjoyment and safety, the following supplementary rules are established for the area described:

Amboy Crater National Natural Landmark

San Bernardino Base Meridian

T. 5 N, R. 11 E,
Sections. 1, 2, 3, 10, 11, 12, 13, 14, and 15.

Vehicles

It is prohibited to take any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier.

Vehicle operation is prohibited within the cinder cone and on the slopes of the cinder cone. Vehicle operation within the lava flow area is only authorized on established routes. This includes any vehicle, motorcycle, off highway vehicle, bicycle or any other means of wheeled or tracked conveyance, whether motorized or manually operated.

The use of vehicles in the bowl/lava flow area south of the cinder cone is restricted. Only employees of the Federal, State or Local government, who are responding to an emergency or have official business requiring them do so, are authorized to operate vehicles in this area.

Vehicle parking is restricted to already disturbed areas.

Vehicles shall not be parked in such a manner as to obstruct or impede normal or emergency traffic movement, create a safety hazard or endanger any person, property or feature. Vehicles so parked will be removed and impounded at the owner's expense.

Hiking

Due to increased visitor usage and natural erosion, any use of the north hiking trail is prohibited. This trail is being closed to allow restoration and cone stabilization. Hiking off established trails or upon the slopes of the crater is prohibited. The west trail will remain open for the purposes of crater access and hiking.

Firearms

Discharge or use of firearms, other weapons, or fireworks is prohibited within the boundaries of the Amboy Crater National Natural Landmark/Area of Critical Environmental Concern.

Hunting

Due to the extremely limited and fragile nature of all life forms within the lava flow ecosystem, the hunting, take, possession or harassment of any mammal, bird or reptile is strictly prohibited. This also includes any taking or disturbing of any form of plant life. This rule will not only serve to protect limited natural resources within this ecosystem, but will complement an already existing rule under the California Fish and Game Code (Title 14, Section 42.5(E)(1)), relating to the take of any reptile from ecological reserves, State parks, national parks or monuments.

Camping

Camping is restricted to already disturbed areas.

Authority

The authority for closure and restriction orders to protect persons, property, public lands and resources, is contained in Title 43 Code of Federal Regulations, subpart 8364, subparts a through d. The authority for establishing supplementary rules is contained in Title 43 Code of Federal Regulations, subpart 8365, section 1–6. These rules will be available in the Needles Field Office, which manages these lands. A violation of a supplementary rule is punishable as a class A misdemeanor.

Molly S. Brady,

Field Manager.

[FR Doc. 98–21049 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Request for Comments; Eastern Greene Township Rural Historic District; Determination of Eligibility for the National Register of Historic Places

On February 24, 1995, the Eastern Greene Township Rural Historic District, Franklin County, Pennsylvania was determined eligible for the National Register of Historic Places for its historic and architectural importance, following a request from the Federal Highway Administration. The district consists of a landscape farmed continuously since the eighteenth century and reflects the agricultural patterns of the rich Cumberland Valley. Important features found in the district include intact farmsteads, with their significant collection of barns, farmhouses and outbuildings, the field patterns, fencerows, family cemeteries, and the network of the historic farm roads. The finding of eligibility was based upon review of documentation submitted by the Federal Highway Administration, the Pennsylvania Historical and Museum Commission, and Greene Township. All agreed that the historic district is eligible for the National Register of Historic Places.

Since the determination of eligibility was issued, the National Park Service has received a request that the boundary

of the district be redrawn to exclude lands located within the Borough of Chambersburg, based upon a claimed loss of historic integrity of the area. Documentation relative to the historic integrity of this portion of the district was submitted to the National Register. Copies of this documentation are available from the National Register at the address below. In order to accommodate those who wish to provide new information concerning the boundary of the Eastern Greene Township Rural Historic District, the National Park Service is providing a 60 day comment period. A written statement on the determination of eligibility will be issued by the National Park Service within 30 days of the close of the comment period.

The determination of eligibility remains in effect pending review of responses submitted during the comment period. In order to revise the boundary the National Park Service must receive authoritative information, which evaluated in conjunction with documentation already on file, results in a finding that the determined eligible boundary does not accurately delineate the historic district in accordance with established National Register standards.

Comments should be addressed to the National Register of Historic Places, National Park Service, 1849 C St., N.W., Room NC400, Washington, D.C. 200240.

Carol D. Shull,

Keeper of the National Register of Historic Places, National Register, History and Education.

[FR Doc. 98–21015 Filed 8–5–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 1, 1998, applied Science Labs, Inc., A Division of Altech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Heroin (9200)	I
Morphine (9300)	II

The firm plans to import these controlled substances for the manufacture of reference standards.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 17, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–20972 Filed 8–5–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 17, 1998, and published in the **Federal Register** on April 30, 1998, (63 FR 23796), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The phenylacetone will be imported for conversion to amphetamine base, isomers and salts thereof for sale in bulk form to customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Johnson Matthey, Inc. to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: July 17, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–20973 Filed 8–5–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 8, 1998, and published in the **Federal Register** on February 12, 1998 (63 FR 7182), Nycomed, Inc., 33 Riverside Avenue, Renssalaer, New York 12144 made application to the Drug Enforcement Administration (DEA) by letter to be registered as a bulk manufacturer of methylphenidate (1724).

A registered bulk manufacturer of methylphenidate filed written comments and an objection in response to the notice of application. Review of the APA's definitions of license and

licensing reveals that the granting or denial of a manufacturer's registration is a licensing action, not a rulemaking. Courts have frequently distinguished between agency licensing actions and rulemaking proceedings. *See, e.g. Gateway Transp. Co.* v. *United States*, 173 F. Supp. 822, 828 (D.C. Wis. 1959); *Underwater Exotics, Ltd.* v. *Secretary of the Interior*, 1994 U.S. Dist. LEXIS 2262 (1994). Courts have interpreted agency action relating to licensing as not falling within the APA's rulemaking provisions.

The objector argues that Nycomed cannot prove its registration as a bulk manufacturer of methylphenidate is in the public interest, that Nycomed's registration is not required to produce an adequate and uninterrupted supply of methylphenidate, that there is sufficient competition with the present bulk manufacturers and that by there would be a public interest impact on reported trends of over-prescribing, abuse and diversion of methylphenidate.

The arguments of the objector were considered, however, DEA has reviewed the firm's safeguards to prevent the theft and diversion of methylphenidate and found that the firm has met the regulatory requirements and public interest factors of the Controlled Substances Act.

Nycomed has been and is currently registered with DEA as a manufacturer of other Schedule II controlled substances. Nycomed's application is based on the firm's request to add methylphenidate to its existing registration as a bulk manufacturer. The firm has been investigated by DEA on a regular basis to determine if the firm maintains effective controls against diversion and if its continued registration is consistent with the public interest. These investigations have included, in part, inspection and testing of the firm's physical security, audits of the firm's records, verification of compliance with state and local law and a review of the firm's background and history. These investigations have found Nycomed to be in compliance with the Controlled Substances Act (C.S.A.) and its implementing regulations in recent years.

Under Title 21, Code of Federal Regulations, Section 1301.43(b), DEA is not required to limit the number of manufacturers solely because a smaller number is capable of producing an adequate supply provided effective controls against diversion are maintained. DEA has determined that effective controls against diversion will be maintained by Nycomed.

Additionally, Nycomed has applied for registration as a bulk manufacturer in order to perform a chemical isolation process on methylphenidate which had been manufactured by another manufacturer currently registered to bulk manufacture methylphenidate.

After reviewing all the evidence, DEA has determined, pursuant to 21 U.S.C., Section 823(a) that it is consistent with the public interest to grant Nycomed's application to manufacture methylphenidate at this time. Therefore, pursuant to 21 U.S.C. Section 823 and 28 CFR Section 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: July 29, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–20977 Filed 8–5–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated May 7, 1998, and published in the **Federal Register** on May 19, 1998 (63 FR 27590), Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876–3771), made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The tetrahydrocannabinols will be utilized exclusively for non-human consumption in drug of abuse detection kits.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Roche Diagnostic Systems to import tetrahydrocannabinols is consistent with the public interest and with United Sates obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: July 17, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–20974 Filed 8–5–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances Notice of Registration

By Notice dated May 4, 1998, and published in the **Federal Register** on May 19, 1998, (63 FR 27591), Sigma Chemical Company, Subsidiary of Sigma-Aldrich Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methlenedioxy-N-ethylamphetamine (7404).	I
3,4-Methlenedioxy- methamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocyn (7438)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium powdered (9639)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The firm plans to repackage and offer as pure standards controlled substances in small milligram quantities for drug testing and analysis.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Sigma Chemical Company to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: July 17, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–20975 Filed 8–5–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated May 5, 1998, and published in the **Federal Register** on May 19, 1998, (63 FR 27591), Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

The firm plans to import coca leaves to manufacture bulk controlled substances.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Stepan Company to import coca leaves is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: July 17, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–20976 Filed 8–5–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Submitted for Public Comment; Employment Services Reporting System

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed ten month extension of the Employment Service Program Reporting System from the current end date of August 31, 1999 to a new end date of June 30, 2000.

A copy of the previously approved information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 5, 1998.

The Department of Labor 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.

ADDRESSES: John R. Beverly, III, United States Employment Service, U.S. Department of Labor, 200 Constitution Avenue NW., Room N4470, Washington, DC 20210, Tel. 202–219–5257, Fax 202–219–6643, E-mail jbeverly@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Information on basic labor exchange services is necessary to assure that the States are complying with legal requirements of the Wagner-Peyser Act as amended by the Job Training Partnership Act (JTPA). Program data items are required from States reporting to the Department of Labor as part of other information in order to determine if the States are complying with the basic labor exchange requirements.

Information regarding employment and training services provided to veterans by State public employment services agencies must be collected by the Department of Labor to satisfy legislative requirements, as follows: (a) to report annually to Congress on specific services (38 U.S.C. 2007(c) and 2012(c)); (b) to establish administrative controls (38 U.S.C. 2007 (b)); and (c) for administrative purposes. These data are reported on the VETS 200 A and B, the VETS 300, and Manager's reports.

II. Current Action

The Department is requesting an extension of the Employment Service Program Reporting System without changes to data elements, definitions, reporting instructions and/or reporting requirements from the current end date of August 31, 1999 to a new end date of June 30, 2000.

In response to the requirements of the Government Performance and Results Act (GPRA) of 1993, the national call for government programs to be more accountable and results oriented, the Department of Labor (DOL), Employment and Training

Administration (ETA), United States Employment Services (USES) has taken the first step to establish performance measures for the public labor exchange programs and labor exchange function for the Workforce Development and One-Stop Career Center service delivery systems.

The United States Employment Service (USES) worked cooperatively with States and other stakeholders to develop program specific performance measures. Performance measures were proposed and comments from stakeholders were requested in the **Federal Register** (63 FR 32564–32578).

The proposed measures are a starting point for development of comprehensive measures for the labor exchange function of the emerging Workforce Development system. It is the Department's intent to use the comments received to develop performance measures for implementation on July 1, 2000.

The effort to finalize the performance measures, to identify the data elements needed to produce the performance measures and to define specific changes to the ETA reporting requirements will take several months to accomplish the transition to a new reporting system. States will also need time to make the necessary procedural, reporting, and computer software changes that will be necessary. This may be complicated by State efforts to respond to necessary computer program changes for Year 2000 compliance.

In consideration of these issues, the Department is requesting an extension of the Employment Service Program Reporting System without changes from the current end date of August 31, 1999 to a new end date of June 30, 2000.

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) to extend collection of the Employment Service Program Reporting System data previously approved and assigned OMB Control No. 1205–0240 and the data reporting for the ETA 9002 A, B, C, including the data reporting for the VETS 200 A and B, VETS 300, the manager's report on services to veterans and recordkeeping.

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Employment Service Program Reporting System.

OMB Number: 1205–0240.

Total Respondents: 54 States and territories.

Estimated Burden Hours: 7213.

Reports	Respondents	Frequency	Total responses	Average time per response (hours)	Burden (hours)
USES Rpt	54	Quarterly	216	2.75	594
VETS Rpt	54	Quarterly	216	.25	54
USES Rec.	54	Quarterly	216	12.00	648
VETS 200A	54	Quarterly	216	.85	184
VETS 200B	54	Quarterly	216	.85	184
VETS 300	54	Quarterly	216	1.00	216
Mgt. Rpt	1600	Quarterly	6400	.83	5333
Totals			7534		7213

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 16, 1998.

John R. Beverly, III,

Director, United States Employment Service, U.S. Department of Labor.

[FR Doc. 98–20960 Filed 8–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–31]

Electrical Standards for Construction; Information Collection Requirements

ACTION: Notice; Opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in the Electrical Standards for Construction (29 CFR part 1926, Subpart K). The Agency 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.

DATES: Written comments must be submitted on or before October 5, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–31, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be

transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 219–8061. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061, extension 100, or Barbara Bielaski at (202) 219–8076, extension 142. For electronic copies of the Information Collection Request on the Electrical Standards for Construction (29 CFR part 1926, Subpart K), contact OSHA's WebPage on the Internet at http://www.osha.gov and click on ''Regulations and Compliance.''

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The written description of the Assured Equipment Grounding Conductor Program (AEGP) required by § 1926.404(b)(1)(iii) allows employers, employees, and OSHA compliance officers to determine how the requirements of the standard are being met, including the method of recording tests. For example, the employer's written program might specify the use of yellow tape to color code every tool and cord set. By referring to the written program, OSHA compliance officers and other persons can easily determine if the employer is complying with the program.

The posting of warning signs enables employees to avoid accidental contact of electrical equipment used on construction sites. Contact with unguarded live electrical parts, especially at high voltage, can be hazardous to employees.

The tagging of controls, equipment and circuits is intended to prevent the inadvertent reactivation of the controls, equipment and circuits while they are being serviced.

II. Current Actions

This notice requests public comment on OSHA's burden hour estimates prior to OSHA seeking Office of Management and Budget (OMB) approval of the information collection requirements contained in the Electrical Standards for Construction (29 CFR part 1926, Subpart K).

Type of Review: Extension of a Currently Approved Collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Electrical Standards for Construction (29 CFR part 1926, Subpart K).

OMB Number: 1218–0130.

Agency Number: Docket Number ICR–98–31.

Affected Public: Business or other for-profit.

Number of Respondents: 278,500.

Frequency: Initially, On Occasion.

Average Time per Response: Varies from .02 to .17 hour.

Estimated Total Burden Hours: 53,001.

Total Annualized Capital/Startup Costs: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval of the information collection request. The comments will become a matter of public record.

Signed at Washington, DC, this 15th day of July 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–20959 Filed 8–5–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10349, et al.]

Proposed Exemptions; Harris Trust & Savings Bank

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of

proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Harris Trust & Savings Bank and Its Affiliates (Harris Trust) Located in Chicago, Illinois

[Application No. D–10349]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Exemption for Acquisition of Fund Shares With Assets Transferred in-Kind From a CIF

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, as of March 21, 1997, to the acquisition by employee benefit plans (the Plans), including two plans sponsored by Harris Trust for its own employees (the In-house Plans), of shares of any open-end investment companies (the Funds) registered under the Investment Company Act of 1940 (the '40 Act) for which Harris Trust is an investment adviser and may provide other services, with Plan assets transferred in-kind to the Funds from certain collective investment funds maintained by Harris Trust (the CIFs), in connection with the termination of the CIFs, provided that the following conditions are satisfied:

(a) For each Plan, a second fiduciary who is unrelated to, and independent of, Harris Trust (the Independent Fiduciary) receives prior written notice of the in-kind transfer of Plan assets from a CIF to a Fund in exchange for shares of the Fund, as well as the disclosures described in Section II(f).

(b) On the basis of the information described in Section II(f), the Independent Fiduciary gives prior written approval for each acquisition of Fund shares with Plan assets transferred from a CIF and the fees to be received by Harris Trust in connection with its services to the Fund. Such approval must be consistent with the general fiduciary responsibility provisions imposed on fiduciaries by Part 4 of Title I of the Act.

(c) No sales commissions are paid by the Plans in connection with the acquisition of Fund shares with Plan assets transferred from a CIF.

(d) All or a pro rata portion of the assets of a CIF are transferred in-kind to a Fund in exchange for shares of the Fund.

(e) Each Plan receives Fund shares having a total net asset value equal to the value of the Plan's pro rata share of the corresponding CIF's assets on the date of the in-kind transfer, based on the current market value of the CIF's assets as determined in a single valuation performed in the same manner and as of the close of business of the same day, using independent sources in accordance with Securities and Exchange Commission (SEC) Rule 17a–7 [1] of the '40 Act and the procedures established by the Fund pursuant to Rule 17a–7. Such procedures require that all securities for which a current market value cannot be obtained by reference to the last sales price for transactions reported on a recognized securities exchange or quoted in the NASDAQ system, must be valued based upon an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the in-kind transfer, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Harris Trust;

(f) Within 30 days after completion of each acquisition of Fund shares with Plan assets transferred in-kind from a CIF, Harris Trust sends by regular mail to the Independent Fiduciary a written confirmation containing the following information:

(1) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4);

(2) The market price, as of the date of the in-kind transfer, of each such security; and

(3) The identity of each pricing service or market-maker consulted in determining the value of such securities.

(g) Within 90 days after completion of each acquisition of Fund shares with Plan assets transferred in-kind from a CIF, Harris Trust sends by regular mail to the Independent Fiduciary a written confirmation containing the following information:

(1) The number of CIF units held by the Plan immediately before the in-kind transfer, the related per unit value, and the total dollar amount of such CIF units; and

(2) The number of shares in the Funds that are held by the Plan immediately after the in-kind transfer, the related per share net asset value, and the total dollar amount of such shares.

(h) The conditions set forth in paragraphs (c), (d), (e), (f), (i), (o), (p), and (q) of Section II are satisfied.

Section II—Exemption for Receipt of Fees From the Funds

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, as of March 21, 1997, to the receipt of fees by Harris Trust from the Funds for acting as an investment adviser for the Funds, as well as for acting as the custodian, transfer agent, sub-administrator for the Funds, or for providing any other ''secondary service'' (as defined in Section III(i), below) to the Funds, in connection with the investment in shares of the Funds by Plans for which Harris Trust is a fiduciary (the Client Plans), other than the In-house Plans, provided that the following conditions are satisfied:

(a) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds, and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds.

(b) The price paid or received by a Client Plan for shares of a Fund is the net asset value per share, as defined in Section III(f), at the time of the transaction, and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither Harris Trust nor an affiliate (including officers or directors, and other persons, as defined in Section III(b), below) purchases from or sells to the Client Plans shares of the Funds.

(d) For each Client Plan, the combined total of all fees received by Harris Trust for its services to the Client Plan, and in connection with its services to any of the Funds in which the Client Plan may invest, constitutes no more than ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(e) Harris Trust receives no fees payable pursuant to Rule 12b–1 under the 40 Act (12b–1 fees) in connection with the transactions.

(f) Prior to the initial investment by a Client Plan in any of the Funds, the Independent Fiduciary receives full and

[1] 17 CFR 270.17a–7.

detailed written disclosure of information concerning the Fund, including, but not limited to

(1) A current prospectus for the Fund;

(2) A statement describing the fees for investment management, investment advisory, or other similar services, any fees for Secondary Services, as defined in Section III(i), and all other relevant fees to be paid by the Client Plan and by the Fund to Harris Trust, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why Harris Trust considers an investment in the Fund to be appropriate for the Client Plan;

(4) A statement describing whether there are any limitations applicable to Harris Trust with respect to which assets of a Client Plan may be invested in the Fund, and, if so, the nature of such limitations; and

(5) Upon request of the Independent Fiduciary, a copy of the notice of exemption, if granted (and a copy of this notice of proposed exemption), once published in the **Federal Register**.

(g) On the basis of the information described in paragraph (f), the Independent Fiduciary gives prior written authorization for

(1) The investment of assets of the Client Plan in shares of a Fund;

(2) The Funds in which the assets of the Client Plan may be invested; and

(3) The fees to be paid to Harris Trust in connection with its services to the Funds.

Such authorization by the Independent Fiduciary must be consistent with the general fiduciary provisions of Part 4 of Title I of the Act.

(h) The authorization described in paragraph (g) is terminable by the Independent Fiduciary at will without penalty to the Client Plan, upon written notice of termination to Harris Trust. Harris Trust shall effect such termination by selling the shares of the Fund held by the Client Plan by the close of the business day following the date of receipt by Harris Trust of the termination form (the Termination Form), as defined in Section III(j), or any other written notice of termination. However, if, due to circumstances beyond the control of Harris Trust, the sale cannot be executed within one business day, Harris Trust shall have one additional business day to complete such sale.

(i) Each Client Plan receives a credit, either through cash, or, if applicable, the purchase of additional shares of the Funds pursuant to an annual election made by the Client Plan (which may be revoked at any time), of such Client Plan's proportionate share of all investment advisory fees charged to the Funds by Harris Trust, including any investment advisory fees paid by Harris Trust to third party sub-advisers, within one business day of the receipt of such fees by Harris Trust. The crediting of all such fees to the Client Plans by Harris Trust must be audited by an independent accounting firm at least annually to verify the proper crediting of the fees to each Client Plan.

(j) In the event of an increase in the rate of any fees paid by the Funds to Harris Trust for any investment management services, investment advisory services, or other similar services above the rate which has been approved previously by an Independent Fiduciary, in accordance with paragraph (g), Harris Trust will provide at least 30 days' written notice (separate from the Fund Prospectus) to each Client Plan invested in a Fund which is increasing such fees.

(k) In the event of an addition of a Secondary Service by Harris Trust to a Fund for which a fee is charged, or in the event of an increase in a fee paid by the Funds to Harris Trust for any Secondary Service (which may result from either an increase in the rate of such fee or a decrease in the number or kind of services performed for such fee) above the rate which has been approved previously by an Independent Fiduciary, in accordance with paragraph (g), Harris Trust will provide at least 30 days' written notice (separate from the Fund Prospectus) to each Client Plan invested in a Fund which is adding a service or increasing its fees. Such notice shall be accompanied by the Termination Form.

(l) The Independent Fiduciary is supplied with a Termination Form at the times specified in paragraphs (k), (l), and (m), which expressly provides an election to terminate the authorization described in paragraph (g), with instructions regarding the use of the Termination Form, including the following information:

(1) The authorization is terminable by the Independent Fiduciary at will without penalty to the Client Plan, upon written notice of termination to Harris Trust. Harris Trust shall effect such termination by selling the shares of the Fund held by the Client Plan by the close of the business day following the date of receipt by Harris Trust of the Termination Form, or any other written notice of termination. However, if, due to circumstances beyond the control of Harris Trust, the sale cannot be executed within one business day, Harris Trust shall have one additional business day to complete such sale; and

(2) Failure of the Independent Fiduciary to return the Termination Form will be deemed to be an approval of the additional Secondary Service for which a fee is charged or an increase in the rate of any fees, if such Termination Form is supplied pursuant to paragraphs (k) and (l), and will result in continuation of authorization, as described in paragraph (g), for Harris Trust to engage in the transactions on behalf of the Client Plan.

(m) The Independent Fiduciary is supplied annually with a Termination Form during the first quarter of each calendar year, beginning with the calendar year immediately following the date of publication in the **Federal Register** of a notice of exemption for the subject transactions. However, the Termination Form need not be supplied to the Independent Fiduciary sooner than six months after it has been supplied pursuant to paragraphs (k) and (l), except to the extent required to disclose either an additional Secondary Service for which a fee is charged or an increase in fees.

(n)(1) With respect to each of the Funds in which a Client Plan invests, Harris Trust will provide the Independent Fiduciary of such Client Plan:

(A) at least annually, a copy of an updated prospectus of the Fund;

(B) upon the request of the Independent Fiduciary, with a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement), which contains a description of all fees paid by the Fund to Harris Trust; and

(2) With respect to each of the Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with Harris Trust, Harris Trust, at least annually, will provide the Independent Fiduciary of such Client Plan with a statement specifying:

(A) the total dollar amount of brokerage commissions of each Fund's investment portfolio paid to Harris Trust by such Fund;

(B) the total dollar amount of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to Harris Trust;

(C) the average brokerage commissions per share, in cents per share, paid to Harris Trust by each portfolio of a Fund; and

(D) the average brokerage commissions per share, in cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to Harris Trust.

(o) All dealings between the Client Plans and the Funds are on a basis no

less favorable to the Client Plans than dealings between the Fund and its other shareholders holding shares of the same class as the Client Plans.

(p) Harris Trust maintains for a period of six years the records necessary to enable the persons described in paragraph (q) to determine whether the conditions of this exemption have been satisfied, except that

(1) a party in interest with respect to a Plan, other than Harris Trust, shall not be subject to a civil penalty under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained or are not available for examination, as required by paragraph (q); and

(2) a prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond Harris Trust's control, such records are lost or destroyed prior to the end of the six year period;

(q) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, Harris Trust makes the records referred to in paragraph (p) unconditionally available during normal business hours at their customary location to the following persons or a duly authorized representative thereof:

(A) the Department or the Internal Revenue Service; (B) any fiduciary of a Client Plan with the authority to acquire or dispose of shares of the Funds owned by the Client Plan; and (C) any participant or beneficiary of a Client Plan. However, none of the persons described in (B) or (C) are authorized to examine the trade secrets of Harris Trust, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this proposed exemption:

(a) The term ''Harris Trust'' means Harris Trust & Savings Bank and any affiliate thereof, as ''affiliate'' is defined in paragraph (b).

(b) The term ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''collective investment fund'' or ''CIF'' means a common or collective trust fund or pooled investment fund maintained by Harris Trust.

(e) The term ''Fund'' or ''Funds'' means any diversified open-end management investment company or companies registered under the '40 Act for which Harris Trust serves as an investment adviser, and may also provide custodial or other services approved by the Funds.

(f) The term ''net asset value'' per share means the amount which is calculated by dividing the value of all securities (determined by a method set forth in a Fund's prospectus and statement of additional information) and other assets belonging to each portfolio in the Fund, less the liabilities chargeable to each such Fund portfolio, by the number of outstanding shares.

(g) The term ''relative'' means a ''relative'' as defined in section 3(15) of the Act (or a ''member of the family'' as defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term ''Independent Fiduciary'' means a fiduciary of a Plan who is unrelated to, and independent of, Harris Trust. For purposes of this proposed exemption, a Plan fiduciary will not be deemed to be unrelated to, and independent of, Harris Trust if

(1) such fiduciary directly or indirectly controls, is controlled by, or is under common control with Harris Trust;

(2) such fiduciary, or any officer, director, partner, employee, or relative of such fiduciary is an officer, director, partner, or employee of Harris Trust (or is a relative of such persons); or

(3) Such fiduciary directly or indirectly receives any compensation or other consideration from Harris Trust for his or her own personal account in connection with any transaction described in this proposed exemption. However, with respect to the In-house Plans, the Independent Fiduciary may receive compensation from Harris Trust in connection with the subject transactions, provided that the amount or payment of such compensation is not contingent upon, nor in any way affected by, the Independent Fiduciary's ultimate decision regarding the Plans' participation in the transactions.

With the exception of the In-house Plans, if an officer, director, partner or employee of Harris Trust (or relative of such persons) is a director of the Plan fiduciary and abstains from participation in (i) the choice of the Plan's investment adviser, (ii) the approval of any purchase or sale between the Plan and the Funds, and (iii) the approval of any change in fees paid by the Plan in connection with any of the subject transactions, then paragraph (g)(2) shall not apply.

(i) The term ''Secondary Service'' means a service other than an investment management, investment advisory, or similar service, which is provided by Harris Trust to the Funds, including, but not limited to, custodial, accounting, transfer agent, administrative, brokerage, or any other service.

(j) The term ''Termination Form'' means the form supplied to the Independent Fiduciary, at the times specified in Section II(k), (l), and (m), which expressly provides to the Independent Fiduciary an election to terminate at will the authorization described in Section II(g) without penalty to the Plan. The Independent Fiduciary may use such Termination Form to provide written notice of termination to Harris Trust and instruct Harris Trust to effect the termination by selling the shares of a Fund held by the Plan by the close of the business day following the date of receipt by Harris Trust of the Termination Form. However, if, due to circumstances beyond the control of Harris Trust, the sale cannot be executed within one business day, Harris Trust shall have one additional business day to complete such sale.

(k) The term ''security'' shall have the same meaning as defined in section 2(36) of the '40 Act, as amended, 15 USC 80a–2(36)(1996).

Effective Date: The proposed exemption, if granted, will be effective as of March 21, 1997.

Summary of Facts and Representations

1. Harris Trust & Savings Bank is an Illinois state-chartered bank, a member of the Federal Reserve system, and the largest of 14 banks owned by Harris Bankcorp, Inc. Harris Bankcorp, Inc. is a wholly owned subsidiary of Bankmont Financial Corp., which, in turn, is a wholly owned subsidiary of Bank of Montreal, a publicly traded Canadian banking institution. Harris Trust & Savings Bank and its affiliates are hereafter collectively referred to as Harris Trust.

As of December 30, 1995, Harris Trust had total assets of approximately $17.1 billion. Harris Trust serves as trustee, investment manager, and/or custodian for approximately 600 Plans. As of December 30, 1995, Harris Trust had approximately $162 billion in Plan assets under management, of which

approximately $2 billion was invested in the CIFs.

2. On January 11, 1996, the sale of a portion of Harris Trust's investment management business to Citibank, N.A. was announced. In connection with such sale, Harris Trust terminated certain CIFs on March 21, 1997 and transferred the CIFs' assets in-kind to the Funds in exchange for shares of the Funds. Harris Trust requests an exemption for the in-kind transfer of assets of Plans that were invested in these CIFs who received shares of the Funds. Harris Trust was a fiduciary for Plan assets that were held in these CIFs, and was also an investment adviser for the Funds in which the Plans invested.[2] The Plans that invested in the terminated CIFs included not only the Client Plans of Harris Trust but also two In-house Plans.[3] In addition, Harris Trust represents that conversions of other CIFs to Funds, through an in-kind transfer of the CIFs' assets to those Funds in exchange for Fund shares, may occur in the future. Thus, Harris Trust requests that the proposed exemption cover these future conversions, provided that the same terms and conditions discussed herein are satisfied.[4]

Harris Trust also requests an exemption for Harris Trust to receive fees from the Funds for services rendered to the Funds, in connection with the investments made in Fund shares by Plans for which Harris Trust is a fiduciary. This exemption would include those Client Plans whose assets were transferred from a terminated CIF but would not include assets transferred by the In-house Plans. One affiliate of Harris Trust, Harris Trust Bank of Arizona, and a number of the community banks of Harris Trust which have trust departments, may offer shares of the Funds to their Client Plans. These banks include Harris Bank Naperville, Harris Bank Wilmette, N.A., Harris Bank Barrington, N.A., Harris Bank Winnetka, N.A., Harris Bank St. Charles, Harris Bank Batavia, N.A. and Harris Trust Company of Florida.

3. The terminated CIFs consisted of the five portfolios of an entity known as the Harris Trust and Savings Bank Trust for Collective Investment of Employee Benefit Accounts. These portfolios were (i) the Government/Agency Intermediate Fund, (ii) the Convertible Fund, (iii) the International Equity Fund, (iv) the Balanced Blend Fund, and (v) the Special Capital Fund.

The Funds corresponding to the terminated CIFs consisted of five portfolios of Harris Insight Funds (the Insight Funds). These portfolios are (i) the Intermediate Government Bond Fund, (ii) the Convertible Securities Fund, (iii) the International Fund, (iv) the Balanced Fund, and (v) the Small-Cap Value Fund.

The Insight Funds further consist of the Harris Insight Funds Trust and HT Insight Funds, Inc., both open-end, diversified management investment companies registered under the ''40 Act. Harris Trust serves as investment adviser to each of the Insight Funds. Harris Trust retains subadvisers for certain of the Insight Funds to whom it pays a direct fee. Harris Trust has also entered into portfolio management contracts with an affiliate, Harris Investment Management, Inc., to whom Harris Trust pays the investment advisory fees it receives from the Funds.

Harris Trust requests that the exemption cover not only the Insight Funds but any mutual fund with respect to which Harris Trust may be the investment adviser.

The Conversion Transactions

4. Harris Trust represents that permitting the acquisition by the Plans of Fund shares with Plan assets transferred in-kind to the Funds will avoid the transaction costs that would otherwise be incurred in liquidating CIF assets and making the same investments for the Funds, thus resulting in significant savings, direct and indirect, to the Plans. No sales commissions (other than customary transfer charges to parties other than Harris Trust) will be paid by the Plans in connection with the acquisition of Fund shares with Plan assets transferred from a CIF. Harris Trust believes that the Funds will offer the Plans advantages over the CIFs as pooled investment vehicles. In addition to readily obtainable daily price quotations, ease of trading, and faster distributions (shares of a Fund may be distributed in-kind), the Plans as shareholders of a Fund would have the opportunity to exercise voting and other shareholder rights.

5. With respect to both the past conversion of CIFs to Funds that occurred on March 21, 1997, and the potential conversion of other CIFs to Funds that may occur in the future, Harris Trust makes the following representations regarding disclosures to the Independent Fiduciaries for the Plans. Prior to any conversion, Harris Trust will provide to the Independent Fiduciary of each Plan (including that of the In-house Plans) written notice of termination of the CIF, as well as full and detailed written disclosure of information concerning the Fund, including, but not limited to

(1) A current prospectus for the Fund;

(2) A statement describing the fees for investment management, investment advisory, or other similar services, Secondary Services, and all relevant other fees to be paid by the Plan and by the Fund to Harris Trust, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why Harris Trust considers an investment in the Fund to be appropriate for the Plan;

(4) A statement describing whether there are any limitations applicable to Harris Trust with respect to which assets of a Plan may be invested in the Fund, and, if so, the nature of such limitations; and

(5) Upon request of the Independent Fiduciary, a copy of the notice of exemption, if granted (and a copy of this notice of proposed exemption), once published in the **Federal Register**.

On the basis of this information, the Independent Fiduciary must give prior written approval for each acquisition of Fund shares with Plan assets transferred from a CIF and the fees to be received by Harris Trust in connection with its services to the Fund. Such approval must be consistent with the general

[2] Prohibited Transaction Class Exemptions 77–4 and 97–41 (PTCE 77–4, 42 FR 18732, April 8, 1977 and PTCE 97–41, 62 FR 42830, August 8, 1997) permit, under certain conditions, the purchase or sale by an employee benefit plan of shares of a registered, open-end investment company whose investment adviser is also a fiduciary of such plan (but not an employer of employees covered by the plan). In Advisory Opinion 94–35A, the Department expressed the view that the relief provided by PTCE 77–4 is unavailable for the purchase of investment company shares other than for cash. PTCE 97–41 provides, under certain conditions, specific relief for the purchase of investment company shares with assets transferred in-kind from a collective investment fund, but, like PTCE 77–4, does not extend to in-house plans, and also requires that the other conditions of PTCE 77–4 are satisfied (see Section III of PTCE 97–41, 62 FR 42836). Thus, Harris Trust has requested that all the conversion transactions described herein, as well as its fee arrangement (which is outside the scope of relief afforded by either PTCE 77–4 or PTCE 97–41), be covered by a single individual exemption.

[3] Prohibited Transaction Exemption 77–3 (PTCE 77–3, 42 FR 18734, April 8, 1977) permits, under certain conditions, the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter. However, the Department, at this time, offers no opinion as to whether PTCE 77–3 covers the purchase of investment company shares other than for cash.

[4] In addition, Harris intends to offer Client Plans which are invested in certain non-terminating CIFs the opportunity to redeem for cash all or a portion of their interests in these CIFs and purchase shares of a corresponding Fund. These redemption transactions will not involve in-kind exchanges and are mentioned only in connection with the requested exemption for the receipt of fees.

fiduciary responsibility provisions of Part 4 of Title I of the Act. Plans whose Independent Fiduciaries do not consent to their participation in the CIF conversion will have their interests in the CIF redeemed in accordance with the terms of the CIF prior to the conversion.

Specifically, with respect to the In-house Plans, Harris Trust appointed Magna Trust Company (Magna), formerly known as Illinois State Trust Company, as the Independent Fiduciary to oversee and approve the in-kind transfer of CIF assets attributable to the In-house Plans that were involved in the conversions that occurred on March 21, 1997. Magna provides various services to more than 4,900 fiduciary accounts. These services include employee benefit plan administration, investment management services, and serving as custodian of securities and investment advisor for two bank proprietary mutual funds. Magna is responsible for more than $2 billion in assets, with $1.2 billion in discretionary assets.

As part of its written report, dated January 24, 1997, Magna confirmed both its independence from Harris Trust and its qualifications to serve as the Independent Fiduciary for the In-house Plans. Magna also represented that it understood and accepted the duties, responsibilities, and liabilities in acting as a fiduciary under the Act for the In-house Plans. Based on the disclosures made by Harris Trust regarding the conversion transactions, Magna determined that participation therein was in the best interests of, and appropriate for, each In-house Plan.

In a supplemental report, dated July 7, 1997, Magna represented that following the conversion transactions, it was provided by Harris Trust with the required confirmation statements. In addition, Magna confirmed that the conversion transactions were performed in accordance with the proposed exemption.

6. With respect to both the past conversion of CIFs to Funds that occurred on March 21, 1997, and any future conversions of other CIFs to Funds that may occur, Harris Trust makes the following representations regarding the valuation and other procedures for such transactions.

All or a pro rata portion of the assets of a CIF are transferred in-kind to a Fund in exchange for shares of the Fund distributed to the Plans. The assets transferred consist entirely of cash and marketable securities. Other CIF assets, or assets which do not meet the investment objectives of the Fund, are sold on the open market through an unaffiliated brokerage firm prior to the conversion. The current market value of the CIF assets is determined by a single valuation for each asset, with all valuations performed in the same manner and as of the close of business of the same day, in accordance with Rule 17a–7 of the '40 Act[5] and the procedures established by the Fund pursuant to Rule 17a–7. Rule 17a–7 requires, among other things, that such transactions be effected at the ''independent current market price'' for each security.[6] In this regard, the ''independent current market price'' for specific types of CIF securities involved in the conversion is determined as follows:

(a) If the security is a ''reported security,'' as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (the '34 Act)(17 C.F.R. 240.11Aa3–1), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System; or, if there are no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1), as of the close of business on the CIF valuation date; or

(b) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange or, if there are no reported transactions on such exchange that day, the average of the highest current independent bid and lowest current independent offer on the exchange as of the close of business on the CIF valuation date; or

(c) If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on the CIF valuation date; or

(d) For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry from at least three independent sources as of the close of business on the CIF valuation date.

Harris Trust represents that the values for the securities established in determining the amount transferred from the CIF are the same values used in determining the amount received by the Fund. Thus, each Plan receives Fund shares having a total net asset value equal to the value of the Plan's pro rata share of the CIF's assets on the date of the in-kind transfer.

Within 30 days after completion of each acquisition of Fund shares with Plan assets transferred in-kind from a CIF, Harris Trust sends by regular mail to the Independent Fiduciary a written confirmation containing the following information:

(1) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4);

(2) The market price, as of the date of the in-kind transfer, of each such security; and

(3) The identity of each pricing service or market-maker consulted in determining the value of such securities.

Within 90 days after completion of each acquisition of Fund shares with Plan assets transferred in-kind from a CIF, Harris Trust sends by regular mail to the Independent Fiduciary a written confirmation containing the following information:

(1) The number of CIF units held by the Plan immediately before the in-kind transfer, the related per unit value, and the total dollar amount of such CIF units; and

(2) The number of shares in the Funds that are held by the Plan immediately after the in-kind transfer, the related per share net asset value, and the total dollar amount of such shares.

Harris Trust's Receipt of Fees From the Funds

7. Prior to the investment by a Client Plan in any of the Funds, the Independent Fiduciary receives a full and detailed written disclosure of information concerning the Fund, as previously described in paragraph 5 above (with respect to the conversion transactions). On the basis of this information, the Independent Fiduciary must give prior written approval for the investment by the Client Plan in each Fund and the fees to be paid to Harris Trust in connection with its services to the Fund. Such authorization must be consistent with the general fiduciary provisions of Part 4 of Title I of the Act. The authorization is terminable by the Independent Fiduciary at will without

[5] Rule 17a–7 provides an exemption from the prohibited transaction provisions of section 17(a) of the '40 Act (15 U.S.C. 80a–7(a)), which prohibit, among other things, transactions between an investment company and its investment adviser or affiliates of its investment adviser. Thus, Rule 17a–7 permits transactions between the Funds and other accounts that use the same or affiliated investment advisers, subject to certain conditions that are designed to insure fair valuation of the assets involved in the transaction.

[6] Rule 17a–7 also includes the following requirements: (a) the transaction must be consistent with the investment objectives and policies of the Fund, as described in its registration statement; (b) the security that is the subject of the transaction must be one for which market quotations are readily available; (c) no brokerage commissions or other remuneration may be paid in connection with the transaction; and (d) the Fund's board of directors (i.e., those directors who are independent of the Fund's investment adviser) must adopt procedures to insure that the requirements of Rule 17a–7 are followed, and determine no less frequently than quarterly that the transactions during the preceding quarter were in compliance with such procedures.

penalty to the Client Plan, upon written notice of termination to Harris Trust.

8. Harris Trust represents that there are two levels of fees charged to a Client Plan: (i) those fees which Harris Trust charges for serving as a trustee, investment manager, or custodian of the Client Plan (the Plan-level fees); and (ii) those fees which Harris Trust charges to the Funds (the Fund-level fees) for serving as an investment adviser to the Fund, as well as for serving as a custodian or transfer agent for the Funds or for providing other Secondary Services to the Funds. Harris Trust's rebate procedures relating to its Fund-level fees are described below. These rebate procedures insure that there is a credit of Fund-level fees against all Plan-level investment management fees charged to a Client Plan by Harris Trust and eliminates any ''double fees'' for such services, similar to the requirements of PTCE 77–4, Part II(c).[7]

The Rebate Procedures

In its capacity as a plan fiduciary, Harris Trust charges each Client Plan a fee for investment management/trustee services, based upon its standard fee schedules and the terms of the specific agreement it has with the Client Plan.[8] Plan-level fees for investment management, investment advisory, or other similar services provided by Harris Trust are currently charged in the form of a single asset-based investment management fee, which is billed on a quarterly basis. There is also a Plan-level trustee fee for basic administrative services provided by Harris Trust, as well as other specific service fees. Currently, the annual investment management fee ranges from .375% to .80% of the market value of the assets calculated at the end of each calendar quarter prior to the quarterly billing date, depending upon the amount of assets under management. Plan-level fees are subject to annual minimums for administration and management, expressed as flat dollar amounts.

Harris Trust also provides ''sweep'' services to the Client Plans, which allow idle cash to be automatically invested temporarily in Fund shares, in order to insure that a Client Plan's assets are fully invested at all times. Harris Trust does not charge separate fees for the provision of such sweep services. Instead, charges for sweep services are built into Harris Trust's Plan-level investment management and trustee fees, and any investment advisory fees received by Harris Trust from the Fund into which idle cash is swept will be credited back to the Client Plan in the manner of other Fund investments.[9]

For its services as investment adviser to the Insight Funds, Harris Trust is entitled to receive monthly advisory fees from the Insight funds, as disclosed in the prospectus, currently ranging from approximately 0.11% to 1.05% of the Funds' assets under management, subject to certain voluntary fee waivers. In addition, Harris Trust may receive fees from the Insight Funds for certain Secondary Services. Harris Trust receives no 12b-1 fees payable pursuant to Rule 12b–1 under the ''40 Act.

The Funds accrue daily as an expense payable to Harris Trust a ratable portion of Harris Trust's investment advisory and other administrative fees, based upon the average daily net asset value of the Funds. Such fees are paid by the Fund to Harris Trust monthly in arrears. Harris Trust intends that the Client Plans generally will not incur any increased fees for investing in the Funds. Harris Trust rebates to each Client Plan, on the same business day as the receipt of such fees by Harris Trust, the Client Plan's proportionate share of all advisory fees payable to Harris Trust by the Funds as of such date. Such rebate is effectuated through the purchase of additional shares of the Funds. This rebate procedure is approved by the Independent Fiduciary at the time it provides its original written approval of the investment of a Client Plan's assets in the Funds. Harris Trust continues to charge each Client Plan (other than the In-house Plans) its full investment management fee for all assets under management, including those assets invested in the Funds. The net effect of these procedures is that no Client Plan ever pays, in any period, a ''double'' investment advisory fee for any Client Plan assets invested in the Funds. Harris Trust represents that the combined total of all fees it receives for its services to a Client Plan, and for its services to any of the Funds in which the Client Plan invests, constitute no more than ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

In the case of the In-house Plans, from which Harris Trust receives no Plan-level fees, Harris Trust also rebates to each In-house Plan its proportionate share of all advisory fees payable to Harris Trust by the Funds through the purchase of additional shares of the Funds, in accordance with the procedures described above.

9. Harris Trust represents that it maintains a system of internal accounting controls for the crediting of all Fund-level fees to the Client Plans. Harris Trust is audited by its independent accounting firm, currently KPMG Peat Marwick LLP (the Auditor), at least annually to verify the proper crediting of the fees to each Client Plan. Information regarding fees is used in the preparation of required financial disclosure reports of the Funds for the benefit of the Client Plans.

Specifically, in performing its audit, the Auditor: (a) reviews and tests compliance with the specific operational controls and procedures established by the Harris Trust for making credits; (b) verifies, on a test basis, the daily credit factors transmitted to Harris Trust by the Funds; (c) verifies, on a test basis, the credits paid in total to sum of all credits paid to each Client Plans; (d) verifies, on a test basis, the credits paid in total to the sum of all credits paid to each Client Plan; and (e) recomputes, on a test basis, the amount of the credit determined for selected Client Plans and verifies that the proper credit was made to the proper Client Plan.

In the event that either the internal audit by Harris Trust or the independent audit by the Auditor identifies an error made in the crediting of fees to the Client Plans, Harris Trust will correct the error. With respect to any shortfall in credited fees to a Client Plan, Harris Trust will make a cash payment to the Client Plan equal to the amount of the error plus interest based on the greater of either (a) the money market rate

[7] As previously noted in Footnote 2, PTCE 77–4 permits, under certain conditions, the purchase or sale (for cash) by an employee benefit plan of shares of a registered, open-end investment company whose investment adviser is also a fiduciary of such plan (but not an employer of employees covered by the plan). PTCE 77–4 requires, among other things, that the plan not pay an investment management, investment advisory, or other similar fee with respect to the plan assets invested in such shares for the entire period of such investment. However, Section II(c) of PTCE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the '40 Act. Section II(c) further states that this condition does not preclude the payment of investment advisory fees by the Client Plan, based on total plan assets, where a credit representing the Client Plan's pro rata share of investment advisory fees paid by the investment company has been subtracted.

[8] Harris Trust represents that all fees paid by the Client Plans directly to Harris Trust for services performed by Harris Trust are statutorily exempt under section 408(b)(2) of the Act and the regulations thereunder. However, the Department expresses no opinion herein as to whether the fees received by Harris Trust for the provision of services to the Client Plans would comply with the requirements of section 408(b)(2).

[9] See the Department's letter dated August 1, 1986 to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, which states the Department's views regarding the application of the prohibited transaction provisions of the Act to sweep services provided to employee benefit plans by fiduciary banks and the potential applicability of certain statutory exemptions.

offered by Harris Trust for the period involved, or (b) the total rate of return for shares of the Funds, including dividends, that would have been acquired during such period. Any excess credits made to a Client Plan will be corrected by an appropriate deduction and reallocation of cash during the next payment period to reflect accurately the amount of total credits due to the Plan for the period involved.

10. Harris Trust states that any increase in the rate of fees paid by a Fund to Harris Trust must receive the prior written approval from every Independent Fiduciary of every plan investing in shares of the Fund. Harris Trust uses a ''negative consent'' procedure to obtain such approvals. This procedure is described as follows.

In the event of an increase in the rate of any fees paid by the Funds to Harris Trust for any investment management services, investment advisory services, or other similar services above that rate which has been approved by an Independent Fiduciary for a Client Plan, Harris Trust provides at least 30 days' written notice to each Client Plan investing in shares of a Fund which is increasing such fees. Such notice may take the form of a proxy statement, letter, or similar communication that is separate from the Fund Prospectus and must explain the nature and amount of the additional service or the nature and amount of the increase in fees.

In the event of an addition of a Secondary Service by Harris Trust to a Fund for which a fee is charged, or in the event of an increase in a fee paid by the Funds to Harris Trust for any Secondary Service (which may result from either an increase in the rate of such fee or a decrease in the number or kind of services performed for such fee) above that rate which has been approved by an Independent Fiduciary, notice provided to Client Plans must be accompanied by a Termination Form, which is described in paragraph 11 below.

However, with respect to the In-house Plans, Harris Trust did not retain the Independent Fiduciary for the In-house Plans for purposes of reviewing Fund-level fee changes on an on-going basis. Harris Trust states that following completion of the conversion transactions on March 21, 1997, the In-house Plans' investments in the Funds were managed by in-house fiduciaries, consistent with the requirements of PTCE 77–3.[10]

[10] The Department expresses no opinion herein as to whether any transactions with the Funds by the In-house Plans are covered by PTCE 77–3.

11. Each Independent Fiduciary will be supplied annually with a Termination Form during the first quarter of each calendar year, beginning with the calendar year immediately following the date of publication in the **Federal Register** of a notice of exemption for the subject transactions. However, the Termination Form need not be supplied to the Independent Fiduciary sooner than six months after it has already been supplied, except to the extent required to disclose either an additional Secondary Service for which a fee is charged or an increase in fees.

The Termination Form, which expressly provides an election to terminate the authorization, provides instructions regarding the use of the Termination Form, including the information discussed in Section II(l)(1) and (2), above.

12. No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds, and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds. In addition, neither Harris Trust nor an affiliate (including officers or directors, and other persons) will be allowed to directly purchase from or sell to the Client Plans any shares of the Funds. The price paid or received by a Client Plan for shares of a Fund is the net asset value per share at the time of the transaction, and is the same price which would have been paid or received for the shares by any other investor at that time. Finally, all dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings between the Fund and its other shareholders.

13. To insure that the Independent Fiduciary has the information necessary to effectively monitor each of the Funds in which a Client Plan invests, Harris Trust provides to the Independent Fiduciary certain on-going disclosures, as discussed in Section II(n)(1) and (2), above.

In this regard, a Harris Trust affiliate may execute securities brokerage transactions for the investment portfolios of certain of the Funds. To the extent that Harris Trust does not currently execute securities brokerage transactions with respect to any Fund for which a fee is paid to Harris Trust, but proposes to do so in the future, Harris Trust will provide at least 30 days' written notice to each Client Plan investing in shares of such Fund. Such notice will be accompanied by a Termination Form allowing the Client Plan an option to object to the addition of brokerage services to a Fund, as a Secondary Service, by Harris Trust. Failure of the Independent Fiduciary to return the Termination Form will be deemed to be approval by the Client Plan of brokerage services by Harris Trust. Harris Trust currently has one affiliated broker, Harris Investors Direct, Inc. (Harris Investors). Harris Trust represents that Harris Investors has not provided any brokerage services with respect to the transactions which have taken place to date.

If any Harris Trust affiliate, including Harris Investors, provides brokerage services to a Fund, Harris Trust will provide the Independent Fiduciary of the Client Plan with a statement at least annually that specifies information about the commissions received by the Harris Trust affiliate, as discussed in Section II(n)(2)(A) through (D), above.

14. In summary, Harris Trust represents that the subject transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) the Funds provide the Client Plans and the In-house Plans with a more advantageous investment vehicle than the CIFs, yet avoid the payment to Harris Trust of any duplicative fees for investment management, investment advisory, or other similar services;

(b) with respect to the conversions of CIFs to Funds, an Independent Fiduciary approves in advance any transfer of Plan assets in exchange for Fund shares and only after full written disclosure of information concerning the Funds; (c) each Plan receives Fund shares having a total net asset value equal to the value of the Plan's pro rata share of the CIF's assets on the date of the in-kind transfer, as determined by a single valuation for each asset, with all valuations performed in the same manner and as of the close of business of the same day, in accordance with the procedures established by the Fund pursuant to Rule 17a–7 of the 40 Act (requiring the use of independent sources); (d) the Independent Fiduciary receives written confirmation of the entire transaction that discloses the number of CIF units held by the Plan immediately before the conversion and the number of Fund shares held by the Plan immediately after, the related per unit and per share values, and the total dollar amount of the CIF units and the Fund shares involved in the transaction;

(e) with respect to any investments in a Fund by the Client Plans and the payment of any fees by the Fund to Harris Trust, an Independent Fiduciary approves such investments and fees in advance and only after full written disclosure of information concerning the Fund, including a current prospectus and a statement describing

all fees to be paid to Harris Trust; (f) any authorizations made by a Client Plan regarding investments in a Fund, fees paid by the Fund to Harris Trust, or any increases in fees for secondary services provided to the Fund by Harris Trust, are terminable by the Independent Fiduciary at will, without penalty to the Client Plan, upon written notice to Harris Trust; (g) annual audits by an independent accounting firm are required to verify the proper crediting to the Client Plans of fees charged by Harris Trust to the Funds; (h) the Client Plans and the In-house Plans do not pay any commissions or redemption fees in connection with their acquisition of Fund shares (either through a direct purchase of the shares or through a transfer of CIF assets in exchange for the shares) or the Plans' sale of Fund shares; and (i) all dealings between the Client Plans and the In-house Plans and the Funds are on a basis no less favorable to the Plans than dealings between the Fund and its other shareholders.

Notice to Interested Persons

Harris Trust will provide notice of the proposed exemption to interested persons by first-class or overnight mail within 15 days of the date of publication of this notice of pendency in the **Federal Register**. Interested persons consist of the Independent Fiduciaries of all Plans which had investments in a CIF which terminated on March 21, 1997. Interested persons also consist of any other Independent Fiduciaries for Plans which, at the time this notice is published in the **Federal Register**, have approved, or will approve, any transfer of a Plan's assets from a CIF to a Fund, in connection with the termination of a CIF prior to the date this proposed exemption is granted. Such notice shall include a copy of this notice of the proposed exemption, as published in the **Federal Register**, and shall inform interested persons of their right to comment and/or request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 45 days of the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Individual Retirement Accounts (the IRAs) for Marcia A. Hendrichsen, Larry L. Hendrichsen, Lawrence D. Hendrichsen, Located in Burlington, Iowa, and William H. Napier, George Rashid, Jr., Jake E. Rashid, Carl A. Saunders, and John C. Schuldt, Located in Fort Madison, Iowa (Collectively, the Participants)

[Exemption Application Number: D–10547]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of certain membership units (the Units) in the Catfish Bend Casinos, L.C. (Catfish Bend), by the IRAs [11] to the Participants, disqualified persons with respect to the IRAs, provided that the following conditions are met:

(a) The Sale of the Units by each IRA is a one-time transaction for cash;

(b) The terms and conditions of each Sale are at least as favorable to each IRA as those obtainable in an arm's length transaction with an unrelated party;

(c) Each IRA receives the fair market value of the Units at the time of each Sale; and

(d) Each IRA is not required to pay any commissions, costs or other expenses in connection with each Sale.

Summary of Facts and Representations

1. The IRAs are individual retirement accounts, as described in section 408(a) of the Code. Among the assets of each IRA are certain membership Units in Catfish Bend, an Iowa limited liability company which operates the riverboat casino Catfish II. Currently, there are 66,521 Units outstanding which are owned by 496 members.

The applicants describe the IRAs and their holdings of the Units as follows:

(a) The IRA of Marcia A. Hendrichsen currently holds assets valued at approximately $59,127, which includes 20 Units. The IRA originally purchased the Units on January 27, 1994 for $2,000.

(b) The IRA of Larry L. Hendrichsen currently holds assets valued at approximately $48,490, which includes 20 Units.

The IRA originally purchased the Units on January 27, 1994 for $2000.

(c) The IRA of Lawrence D. Hendrichsen currently holds assets valued at approximately $49,832, which includes 10 Units. The IRA originally purchased the Units on January 27, 1994 for $1000.[12]

(d) The IRA of William H. Napier currently holds assets valued at approximately $20,000, which includes 100 Units. The IRA obtained the Units when Mr. Napier rolled them over with the rest of his assets from his individual account in the Napier Wright & Wolf law firm plan, which originally purchased the Units on January 27, 1994 for $10,000.

(e) The IRA of George Rashid, Jr. currently holds assets valued at approximately $42,434, which includes 200 Units. The IRA originally purchased the Units on January 28, 1994 for $20,000.

(f) The IRA of Jake E. Rashid currently holds assets valued at approximately $619,014, which includes 300 Units. The IRA originally purchased the Units on January 28, 1994 for $30,000.

(g) The IRA of Carl A. Saunders currently holds assets valued at approximately $36,797, which includes 100 Units. The IRA originally purchased the Units on January 31, 1994 for $10,000.

(h) The IRA of John C. Schuldt, president of Catfish Bend, currently holds assets valued at approximately $104,665, which includes 320 Units. The IRA purchased the Units on June 13, 1994 for $32,000.

2. The applicants request exemptions for the Sale of the Units by each individual IRA to its respective Participant. The applicants represent that the IRAs have benefitted from significant appreciation and returns since purchasing the Units. The applicants believe that at present price levels, an excellent opportunity for the Sale of the Units now exists. Accordingly, they wish to sell the Units from their respective IRAs to ensure that each IRA realizes a substantial profit.[13]

[11] Because each IRA has only one participant, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[12] The Department notes that the Units held in the IRAs of Marcia, Larry L., and Laurence Hendrichsen, are valued at $250 per Unit, based on the Deloitte and Touche appraisal discussed below. However, in the case of the remaining IRAs, the participants carried the value of the Units at $200 per unit. This amount reflects the value of the Units prior to the Deloitte and Touche appraisal, and is, in effect, obsolete. Thus, the value of the Catfish interests is $250 per Unit as reflected in the aforementioned Deloitte and Touche appraisal.

[13] The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. *See, e.g.* Rev. Rul. 73–532, 1973–2 C.B. 128. The Department further notes that

In addition, the applicants represent that the continued holding of the Units will cause the IRAs to incur unrelated business income tax (UBIT) pursuant to section 512 of the Code.[14] Therefore, because of the aforementioned reasons, the applicants seek an exemption to purchase the Units from the IRAs.

3. Gary Hoyer, attorney for Catfish Bend, engaged the Valuation Group of Deloitte and Touche (D&T), an independent, qualified appraiser located in Chicago, Illinois, to determine the fair market value of the Units. The applicants represent that D&T has previously provided services for Catfish Bend. However, the applicants state that payments made by Catfish Bend to D&T constitute substantially less than one percent (1%) of D&T's annual gross revenues. After a comprehensive review of all relevant information, D&T valued the interests on a per Unit basis at $250.

In its analysis, D&T sought to determine the fair market value of a Unit on a ''nonmarketable minority interest'' basis. According to the report submitted by D&T, a nonmarketable minority interest refers to a minority position in the equity of an enterprise which is not actively traded on a public exchange.

In valuing the Units, D&T considered the factors described in the Internal Revenue Service's Revenue Ruling 59–60, which provides general guidelines for valuing ownership interests in closely-held enterprises. In addition, the report submitted by D&T indicates that it reviewed the historical operational and financial data of Catfish Bend, and conducted a thorough onsite inspection of the riverboat before arriving at a conclusion as to the value of the Units.

4. The applicants represent that the proposed transactions will be administratively feasible in that each Sale will be a one-time transaction for cash. Furthermore, the applicants state that the transactions will be in the best interests of the IRAs as they will provide each IRA with the opportunity to dispose of the Units for a significant profit and eliminate any potential UBIT liability. Finally, the applicants assert that the transactions will be protective of the rights of each participant and beneficiary as indicated by the fact that each IRA will receive the fair market value of the Units, as determined by a qualified, independent appraiser on the date of Sale and will incur no commissions, costs, or other expenses as a result of the Sale.

5. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 4975(c)(2) because: (a) the Sale of the Units by each IRA will be a one-time transaction for cash; (b) the terms and conditions of each Sale will be at least as favorable to each IRA as those obtainable in an arm's length transaction with an unrelated party; (c) each IRA will receive the fair market value of the Units at the time of each Sale; and (d) each IRA will not be required to pay any commissions, costs or other expenses in connection with each Sale.

Notice to Interested Persons: Because the applicants are the only Participants in the IRAs, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

For Further Information Contact: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

Bernard Chaus, Inc. Employee Savings Plan (the Plan) Located in New York, New York

[Application No. D–10606]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective December 24, 1997, to (1) the past acquisition by the the Plan of certain stock rights (the Rights) pursuant to a stock rights offering (the Offering) by Bernard Chaus, Inc. (the Employer), the sponsor of the Plan; (2) the past holding of the Rights by the Plan during the subscription period of the Offering; (3) the past disposition or exercise of the Rights by the Plan; and (4) the proposed payment by the Employer to the Plan of an amount necessary to credit Plan accounts of participants affected by an administrative error relating to Rights which were not exercised or sold prior to the expiration of the Rights; provided the following conditions are satisfied:

(A) The Plan's acquisition and holding of the Rights occurred in connection with the Offering made available to all shareholders of common stock of the Employer;

(B) The acquisition and holding of the Rights by the Plan resulted from an independent act of the Employer as a corporate entity and all holders of the common stock of the Employer, including the Plan, were treated in a substantially similar manner with respect to the Offering;

(C) All decisions regarding the holding and disposition of the Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Rights in connection with the Offering, including all determinations regarding the exercise or sale of the Rights received through the Offering, except for those participants who failed to file timely and valid instructions concerning the Rights, in which case the Rights were sold; and

(D) Within 30 days of the date of publication of the final exemption in the **Federal Register**, with respect to the Plan accounts of participants affected by an administrative error whereby 27 Rights (of the 17,041 Rights received by the Plan) were not exercised or sold prior to the expiration of the Rights, the Employer credits the affected accounts with an amount equal to the value such accounts would have received if the Rights had been sold on the last day of the Offering, including interest thereon through the date of such crediting at a rate equal to the average rate of earnings on all Plan assets during that period.

EFFECTIVE DATE: This exemption, if granted, will be effective as of December 24, 1997.

Summary of Facts and Representation

1. The Employer is a designer, manufacturer and marketer of women's apparel. The Employer is incorporated in New York, with its corporate headquarters in New York, New York.

2. The Plan is a defined contribution employee benefit plan with provisions intended to satisfy section 401(k) of the Code. The trustee of the Plan is the Prudential Trust Company of Moosic, Pennsylvania (the Trustee), and the Plan is administered by the Employer.

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section 408(a) of the Code, which describes the tax qualification provisions for IRAs, mandates that the trust be created for the exclusive benefit of an individual or his beneficiaries. However, the Department is expressing no opinion in this proposed exemption regarding whether violations of the Code have taken place with respect to the purchase and subsequent retention of the Units by some of the Participants.

[14] In this regard, six of the eight IRAs have previously incurred and paid UBIT as a result of holding the Units. The other two IRAs did not incur UBIT due to the fact that the earnings on the Units failed to exceed the $1000 threshold for triggering the tax.

3. The Plan provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts among seven investment funds (the Funds), one of which (the Stock Fund) invests exclusively in common stock of the Employer (the Stock). As of December 19, 1998, the Plan had total assets of approximately $3.4 million, and the Accounts of 205 Plan participants had balances invested or partially invested in the Stock Fund. As of December 17, 1997 (the Record Date), there were 2,627,727 shares of Stock issued and outstanding, of which 17,041 shares, or about 0.65%, were owned by the Accounts participating in the Stock Fund.

4. The Applicant represents that as part of an effort to increase capital, the Employer determined it was in the best interests of its shareholders to provide for the offering of rights to purchase additional shares of newly-issued common stock. Accordingly, on December 24, 1997, the Employer commenced the Offering by issuing to all holders of Stock, as of the Record Date, one transferable subscription Right for each share of Stock held. Each Right conferred upon its holder an entitlement to purchase 5.464751 shares of additional Stock (the Additional Shares) at price of $1.4309 per share[15]. The Employer authorized the issuance of up to 13,977,270 Additional Shares through the Offering. The provisions of the Offering included oversubscription privileges which were exercisable by Plan participants, whose Accounts received Rights, in the same manner as other recipients of the Rights.[16]

5. The Employer represents that the Offering did not involve any guarantee or other assurance that any market in the Rights would develop or remain available during the Offering. However, the Stock and the Rights were both traded on the New York Stock Exchange (NYSE) through the last trading day prior to the expiration of the Offering. The terms of the Offering permitted exercise of the Rights commencing December 24, 1997 until 5:00 p.m. EST on January 23, 1998, at which time any unexercised Rights expired.

6. In anticipation of the Offering, the Plan was amended to permit each Plan participant with an Account balance invested in the Stock Fund (the Invested Participants) as of the Record Date to direct the Trustee either to exercise or sell Rights attributable to his or her Stock Fund account, and such amendment also established the procedure for such directions. The Employer represents that on December 24, 1997, all Invested Participants were sent, via first class mail, a copy of the Offering circular published by the Employer, a letter from the Plan administrator providing information about the Offering and describing the procedures for participant directions with respect to the Offering, and a direction form. The direction forms sent to the Invested Participants enabled them to direct the Trustee either to exercise the Rights allocated to their Accounts or to sell such Rights on the open market. As provided in the amended Plan, with respect to any Invested Participant who failed to submit a direction form to the Trustee by 5:00 p.m. EST on January 19, 1998, or submitted an invalid direction form, the Trustee was required to sell the Rights on the open market. The Employer represents that this required sale was disclosed to the Invested Participants in the informational documents relating to the Offering that were sent on December 24, 1997.

7. For each Invested Participant who directed the Trustee to exercise Rights allocated to his or her Account, the funds needed to pay the exercise price were obtained by redeeming specific investments in one or more Funds in which the Invested Participant's Account was invested. The Invested Participants directed the Trustee to sell any specific dollar amount from any specific Fund for the cash needed to pay the exercise price. Where amounts were redeemed from the Funds prior to the last day of the Offering, the amended Plan provided that the Trustee deposit the proceeds of such redemptions in a special short-term investment account pending the Trustee's payment to the subscription agent of the exercise price for the Additional Shares.

8. Rights were exercisable by an Invested Participant only to the extent of funds available in his or her Account in the Plan. If amounts in the Invested Participant's Account were insufficient to pay the exercise price for the Additional Shares subscribed for, the amended Plan provided that the Trustee was to attempt to sell any Rights not exercised. The proceeds of any Rights that were sold and any income from the special short-term investment account were credited, with respect to such sale proceeds, to the Accounts of the Invested Participants whose allocable Rights were sold, and in the case of such income, to the Accounts of the Invested Participants whose redemption proceeds were deposited in the special short-term investment account.

9. In the event that the market price of the Stock, including the effect of any applicable brokerage commissions and other expenses at the time the Trustee would submit Rights for exercise, was less than the exercise price under the Offering, the amended Plan provided that the Trustee would not exercise such Rights. The Employer represents that at 5:00 p.m. EST on January 23, 1998, the time of expiration of the Offering and the date on which the Trustee exercised Rights on behalf of the Invested Participants directing the exercise of the Rights, the exercise price of a Right to obtain shares of the Stock was less than the market price for shares of the Stock on the NYSE, after giving effect to any brokerage commissions and other expenses relating to such transactions. Accordingly, the Trustee exercised at that time all Rights for which a direction to exercise had been properly submitted (i.e., with a valid direction form) by an Invested Participant.

10. The Employer represents that, in order to give the Trustee sufficient time to perform the administrative procedures required to review participant direction forms and to implement directions, including the liquidation of other Plan assets as required to enable an Account to purchase the appropriate number of shares of the Stock at the exercise price with the Rights, the procedure for participant direction with respect to the Offering included timing deadlines for the filing of instructions in advance of the expiration of the Offering. Accordingly, Invested Participants were required to return the direction forms to the Trustee by 5:00 p.m. EST on January 19, 1998. The Employer states that this deadline for filing instructions with the Trustee was specifically and prominently disclosed to all Invested Participants in the Offering materials they received on December 24, 1997.

11. The Employer represents the following summary of the Offering:

(a) All 2,627,727 Rights, including overallotments, were exercised in the Offering. Among the 205 Invested Participants, 23 directed the exercise of Rights allocated to their Accounts, resulting in the exercise of 3,771 Rights, including overallotments, or about 0.147% of the total number of Rights exercised.

(b) Among the Invested Participants, 22 affirmatively directed that the Rights allocated to their Accounts be sold, resulting in the sale of 3,287 Rights.

(c) The remainder of the Invested Participants did not respond. In

[15] Except that the Rights issued to Josephine Chaus, the chair of the board of directors and principal shareholder of the Employer, entitled her to subscribe for and purchase 5.1811105 Additional Shares.

[16] Oversubscription privileges were exercised by only one Plan participant whose Account received Rights.

accordance with the amended Plan, the Rights allocated to their Accounts were sold, resulting in the sale of 9,956 Rights. Because of an administrative error in the communications between the Plan administrator and the Trustee, 27 Rights allocated to the Accounts were not sold prior to the expiration of the Rights. The Employer represents that it shall credit the Accounts of the participants affected by this administrative error with an amount equal to the value these Accounts would have received if the Rights had been sold as planned on the last day of the Offering plus interest thereon through the date of such crediting at a rate equal to the average rate of earnings on all Plan assets during that period.

(d) The Employer represents that all directions and instructions which were filed by the Invested Participants with respect to the Offering were observed and executed by the Trustee. In addition, all Invested Participants had been notified adequately in advance of the Offering of the procedure for directing and instructing the Trustee with respect to their Accounts' rights under the Offering. Thus, the Employer represents that all actions by the Trustee relating to the Offering, with respect to the Accounts, were pursuant to the express participant directions, except for the Accounts of participants who failed to file timely and valid instructions with the Trustee pursuant to the direction procedure. The Employer states that the Trustee's action on behalf of Accounts whose participants failed to file instructions with the Trustee, which was the sale of the Rights received by such Accounts, was disclosed in the explanatory materials for the Offering and in the direction forms sent to Invested Participants. The Employer states further that all actions taken by the Trustee in connection with the Offering were consistent with the participant-directed nature of investments under the Plan.

12. In summary, the applicant represents that the transactions satisfied the criteria of section 408(a) of the Act for the following reasons: (a) The Plan's acquisition of the Rights resulted from an independent act of the Employer; (b) With respect to all aspects of the Offering, all holders of the Stock, including the Accounts of Invested Participants in the Plan, were treated in a substantially similar manner; (c) All decisions with respect to the Plan's acquisition, holding and control of the Rights were made by the individual Invested Participants with Account balances invested in the Stock Fund, except for those who failed to file timely and valid instruction forms, in which case the Rights were sold; (d) The disposition or exercise of the Rights received by the Invested Participants was executed by the Trustee in an orderly manner pursuant to the terms of the Offering relating to the submission of valid instruction forms by such Participants; and (e) The acquisition and holding of the Rights by the Plan affected all of the Invested Participants, and their Accounts held only about 0.65% of the Stock outstanding as of the Record Date of the Offering.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219–8881 (This is not a toll-free number.).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 31st day of July 1998.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–21001 Filed 8–5–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–38; Exemption Application No. D–10558, et al.]

Grant of Individual Exemptions; Roark Young, Russell Rice, Mary J. Rice, Bruce Lamchick, Steven McKean, David McKean & Burton Young

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No.

4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Individual Retirement Accounts (the IRAs) for Roark Young, Russell Rice, Mary J. Rice, Bruce Lamchick, Steven McKean and David McKean, and Burton Young (collectively, the Participants) Located in Miami, Florida

[Prohibited Transaction Exemption 98–38; Exemption Application Numbers D–10558–10561, 10565–10566, 10568]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sales (the Sales) of certain stock (the Stock) by the IRAs [1] to the Participants, disqualified persons with respect to the IRAs, provided that the following conditions were met:

(a) The terms and conditions of the Sales were at least as favorable to each IRA as those obtainable in an arm's length transaction with an unrelated party;

(b) The Sale of Stock by each IRA was a one-time transaction for cash;

(c) Each IRA received the fair market value of the Stock as established by a qualified, independent appraiser; and

(d) Each IRA was not required to pay any commissions, costs or other expenses in connection with each Sale.

EFFECTIVE DATE: These exemptions will be effective as of March 30, 1998.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of the proposed exemption published on Friday, June 19, 1998 at 63 FR 33725.

[1] Because each IRA has only one Participant, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier of the Department, telephone (202) 219–8881. (This is not a toll-free number).

William M. Hitchcock SERP (DB) (the Plan) Located in Houston, Texas

[Prohibited Transaction Exemption 98–39; Exemption Application No. D–10605]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of 67,466 shares of stock (the Stock) in Thoratec Laboratories, Inc. to William M. Hitchcock (Mr. Hitchcock), a disqualified person with respect to the Plan, provided the following conditions are satisfied: (a) the sale is a one-time transaction for cash; (b) the Plan pays no sales commissions or other expenses in connection with the transaction; (c) the Plan receives the fair market value of the Stock, as determined by reference to its most current listed price on the National Association of Securities Dealers Automated Quotation National Market System (NASDAQ) at the time of the transaction; and (d) Mr. Hitchcock is the only Plan participant to be affected by the transaction, and he desires that the transaction be consummated.[2]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 29, 1998 at 63 FR 35290.

Tax Consequences of the Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[2] Since Mr. Hitchcock is the sole owner of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 31st day of July, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–21000 Filed 8–5–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA has submitted the following information collection forms for reinstatement with no changes to the Office of Management and Budget (OMB) for review and clearance under

the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. It was published as proposed forms on May 29, 1998. No comments relating to the information collection were received within the 60 day comment period.

DATES: Comments will be accepted until September 8, 1998.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0061.

Form Number: CLF—8703.

Type of Review: Extension of a currently approved collection.

Title: Central Liquidity Facility (CLF) Repayment Agreement, Regular Member.

Description: The form is used by CLF regular members borrowing from the CLF.

Respondents: Credit Unions which are CLF regular members who borrow from the CLF.

Estimated No. of Respondents/ Recordkeepers: 25.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Other. As the need for borrowing arises.

Estimated Total Annual Burden Hours: 25.

Estimated Total Annual Cost: N/A.

OMB Number: 3133–0063.

Form Number: CLF—8702.

Type of Review: Extension of a currently approved collection.

Title: Central Liquidity Facility (CLF) Membership Application.

Description: This is a one-time form used to request membership in the CLF.

Respondents: Credit Unions seeking membership in the CLF.

Estimated No. of Respondents/ Recordkeepers: 25.

Estimated Burden Hours Per Response: 12.5 hours.

Frequency of Response: Other. As credit unions request membership in the CLF.

Estimated Total Annual Burden Hours: 18.5.

Estimated Total Annual Cost: N/A.

OMB Number: 3133–0064.

Form Number: CLF—7000, 7001, 7002, 7003, & 7004.

Type of Review: Extension of a currently approved collection.

Title: Forms and instructions for Central Liquidity Facility (CLF) loans.

Description: Forms used by each borrower from the CLF.

Respondents: Credit Unions which borrow from the CLF.

Estimated No. of Respondents/ Recordkeepers: 25.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Other. As the need for borrowing arises.

Estimated Total Annual Burden Hours: 25.

Estimated Total Annual Cost: N/A.

OMB Number: 3133–0136.

Form Number: CLF—8704.

Type of Review: Extension of a currently approved collection.

Title: Central Liquidity Facility (CLF) Repayment Agreement, Agent Member.

Description: This form is used by CLF agent members borrowing from the CLF.

Respondents: Credit Unions which are CLF agent members who borrow from the CLF.

Estimated No. of Respondents/ Recordkeepers: 15.

Estimated Burden Hours Per Response: 6 hours.

Frequency of Response: Other. As the need for borrowing arises.

Estimated Total Annual Burden Hours: 90.

Estimated Total Annual Cost: N/A.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–20949 Filed 8–5–98; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA has submitted the following information collections without changes to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public. These collections were published as proposed on June 5, 1998. No comments relating to the information collections were received within the 60 day comment period.

DATES: Comments will be accepted until September 8, 1998.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0114.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Payment on Shares by Public Units and Nonmembers.

Description: 5 CFR 701.32 limits nonmember and public unit deposits in federally insured credit unions to 20 percent of their shares or $1.5 million, whichever is greater.

The collection of information requirement is for those credit unions seeking an exemption from the aforementioned limit.

Respondents: Credit Unions seeking an exemption from the limits set by 5 CFR 701.32 on share deposits by public unit and nonmember accounts .

Estimated No. of Respondents/ Recordkeepers: 20.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Other. As exemption is requested.

Estimated Total Annual Burden Hours: 40.

Estimated Total Annual Cost: N/A.

OMB Number: 3133–0116.

Form Number: NCUA 9600, NCUA 4401, NCUA 4221, NCUA 4505, NCUA 4506.

Type of Review: Extension of a currently approved collection.

Title: 12 U.S.C. 1771—Conversion from Federal to State Credit Union and from State to Federal Credit Union.

Description: The forms constitute the application for an approval of credit union conversions from federal to state charter and from state to federal charter. Additionally, forms in the package contain the application and approval for federal insurance of members accounts in credit unions.

Respondents: Credit unions seeking to convert from federal to state charter and from state to federal charter and non-federally insured state chartered credit unions seeking federal share insurance.

Estimated No. of Respondents/ Recordkeepers: 50.

Estimated Burden Hours Per Response: 4 hours.

Frequency of Response: Other. As credit unions seek approval to convert charter or federal share insurance.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost: N/A.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–20950 Filed 8–5–98; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for the Experimental Program To Stimulate Competitive Research (EPSCoR); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for the Experimental Program to Stimulate Competitive Research (EPSCoR) #1198.

Dates: August 27–28, 1998.

Times: 11:30 a.m.–6:00 p.m.; August 27, 1998; 8:00 a.m.–12:00 noon; August 28, 1998.

Place: J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20003–1796, (202) 393–2000, FAX (202) 626–6915.

Type of Meeting: Closed.

Contact Person: Dr. Richard J. Anderson, Head, Office of Experimental Program to Stimulate Competitive Research (EPSCoR), National Science Foundation, Suite 875, 4201 Wilson Blvd., Arlington, VA 22230, (703) 306–1683.

Purpose of Meeting: To provide advice and recommendations concerning EPSCoR Cooperative Agreement proposals submitted by the states of Kansas, Kentucky, Mississippi, Nevada, North Dakota, Vermont, and Wyoming and the Commonwealth of Puerto Rico to the NSF EPSCoR program for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 8, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–21044 Filed 8–5–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences, Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Date & Time: Tuesday, September 1, 1998, 12:30 pm–5:00 pm; Wednesday, September, 2, 1998, 8:30 am–5:00 pm; Thursday, September 3, 1998, 8:30 am–5:30 pm.

Place: Hubbs Hall, Scripps Institution of Oceanography, 9500 Gilman Drive, LaJolla, CA.

Type of Meeting: Part-Open—(see Agenda, below).

Contact Person: Dr. Donald F. Heinrichs, Oceanographic Centers & Facilities Section Head, Ocean Sciences Division, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1580.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, and evaluate the existing capabilities and services, management structure and operations including possible recompetition of elements of the research vessel fleet required for research sponsored by the National Science Foundation.

Agenda

Closed: September 2, 4:00 pm to 5:00 pm and September 3, 3:30 pm to 5:30 pm—To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years of the Academic Research Fleet Operations Programs.

Open: September 1, 12:30 pm to 5:00 pm, September 2, 8:30 am to 4:00 pm, September 3, 8:30 am to 3:30 pm—To discuss and review academic fleet use and use-trends, specialized capabilities, institutional operations, research program projects, and comparative operations with other research fleets.

Reason for Closing: During the closed session, the Committee will be reviewing proposal, i.e. financial analysis reports, that include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: August 3, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–21045 Filed 8–5–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences; Committee of Visitors for the Division of Earth Sciences Research Programs (1755).

Date & Time: August 31—September 2, 1998—8:30 a.m.–5:00 p.m. each day.

Place: Room 340, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open—(see Agenda, below).

Contact Person: Dr. Alan M. Gaines, Section Head, Division of Earth Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1553.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GFPRA assessments, and access to privileged materials.

Agenda

Closed: August 31 from 1:00–5:00, September 1 from 8:30–12 Noon and September 2 from 8:30 to 4:00—To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years of the Earth Sciences Research Programs.

Open: August 31 from 8:30–12:00—Introductions, charge and general discussion of selection process. September 1 from 1:00-5:00—To assess the results of NSF program investments in the Earth Sciences Division's Research Programs. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt

under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: August 3, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–21046 Filed 8–5–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298]

Nebraska Public Power District (Cooper Nuclear Station); Notice of Issuance of Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (Commission) has issued Amendment No. 178 to Facility Operating License No. DPR–46, issued to Nebraska Public Power District (license) for operation of the Cooper Nuclear Station located in Nemaha County, Nebraska.

The amendment is effective as of the date of issuance.

The amendment replaces, in its entirety, the current Technical Specifications (TS) with a set of improved TS based on NUREG–1433, ''Standard Technical Specifications, General Electric Plants, BWR/4,'' Revision 1, dated April 1995, and on guidance provided in the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132), and 10 CFR 50.36, as amended July 19, 1995 (60 FR 36953). In addition, the amendment adds two license conditions to the newly-created Appendix C of the operating license that require (1) the relocation of previous TS requirements into licensee-controlled documents and (2) the first performance of new and revised surveillance requirements for the new improved TS to be related to the implementation date for the improved TS. The implementation of the amendment and the license conditions will be completed no later than 90 days after the date of the amendment, as stated in the amendment.

The application for the amendment, as supplemented, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 17, 1998 (63 FR 13074). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and has determined not to prepare an environmental impact statement related to the action to convert the current TS to the improved TS. Based on the Environmental Assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment beyond that described in the Final Environmental Statement (FES) related to the operation of the CNS dated February 1973. The Environmental Assessment was published in the **Federal Register** on July 29, 1998 (63 FR 40549).

For further details with respect to the amendment see (1) the application for amendment dated March 27, 1997, as supplemented by (a) two letters in 1997 dated September 29 and December 22, and (6) 9 letters in 1998 dated February 9, March 13, March 26, April 16, May 6, June 23, and July 13 (two letters), July 29, and (2) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room located at the Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, Nebraska 68305.

Dated at Rockville, Maryland, this 31st day of July 1998.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–21041 Filed 8–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Northeast Nuclear Energy Company (the licensee) to withdraw its November 21, 1995, application for an amendment to Facility Operating License No. NPF–49, issued to the licensee for operation of Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut. A Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on March 27, 1996 (61 FR 13520).

The proposed change would have modified the facility Technical Specifications (TSs) pertaining to TS Section 1.33 and Bases Sections 3/4.3.3.9, 3/4.3.3.10, and 3/4.11.2.1. The change would have clarified the definition of source check to include a source check from a light emitting diode, as well as from ionizing radiation.

Subsequently, the licensee informed the staff that the amendment is no longer required. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 21, 1995; and (2) the staff's letters dated July 14, 1998, and July 30, 1998.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, *ATTN:* Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 30th day of July 1998.

For the Nuclear Regulatory Commission.

James W. Andersen,

Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 98–21042 Filed 8–5–98; 8:45 am]

BILLING CODE 7590–01–P

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council, Council).

ACTION: Notice of final action adopting Fourth Northwest Conservation and Electric Power Plan.

SUMMARY: Following the mandate set out in the Pacific Northwest Electric Power Planning and Conservation Act of 1980

(16 U.S.C. 839 et seq.) (the Act), in April 1983 the Council adopted a regional power plan, the Northwest Conservation and Electric Power Plan (the plan). The plan was completely amended in 1986. Although the Act requires the Council to review the plan at least every five years, the Council has taken up certain parts of the plan more often, to respond to ongoing changes in the regional energy picture and to incorporate the most recent technology and analysis. The Council amended the plan in 1989 by publishing the 1989 Supplement to the 1986 Power Plan, updating certain technical data. In April 1991, the Council adopted another complete amendment of the plan. In March 1996, the Council released for public comment the Draft Fourth Power Plan.

The Council deferred adoption of the power plan pending completion of the Comprehensive Review of the Northwest Energy System, and systematic examination of the region's electrical energy system conducted at the behest of the four Northwest Governors. On August 22, 1997, once the Comprehensive Review had adopted its recommendations, the Council issued an Addendum to the draft plan on and took public comment through October 31, 1997. Hearings on the draft plan and the Addendum were conducted throughout the four Northwest states, as required by statute.

The Fourth Northwest Conservation and Electric Power Plan and the Addendum, taken together, constitute the complete Power Plan. Changes that resulted from the intervening Comprehensive Review and public comment were not incorporated in the draft power plan document itself, but were set out in the Addendum. In those cases, then, in which Addendum updates the data and analyses of the Fourth Plan document, the Addendum governs.

Along with the plan and Addendum, the Council adopted a Response to Comments. This document summarizes all the major comments submitted during the course of public consideration of the plan and Addendum and shows how the Council responded to those issues.

SUPPLEMENTARY INFORMATION: The electricity industry nationwide continues to work through a radical restructuring. To give the four Northwest states a voice in how this restructuring affect the region, the governors' ''Comprehensive Review of the Northwest Energy System'' studied the power system and made recommendations about its future.

In light of this restructuring, the Fourth Power Plan has taken a different approach from that of earlier plans. the 1991 Power Plan, for example, has a its theme: ''a time for action.'' In contrast, this plan focuses on ''Northwest Power in Transition: Issues and Opportunities.'' This Power Plan has fewer policy determination or recommended actions. Instead, it is designed to serve as a guidebook for the region's transition to a restructured industry. It has background on the industry and analysis of the major issues that must be addressed as the Northwest moves into a new energy future. Its goal reflects that of the governors in convening the regional review: to develop, through a public process, recommendations for changes in the institutional structure of the region's electric utility industry. The resulting system, the governors said, should ''protect the region's natural resources and distribute equitably the costs and benefits of a more competitive marketplace'' while still ensuring the region of ''an adequate, efficient, economical and reliable power system,'' in the words of the Northwest Power Act.

This Power Plan has the components required by the Northwest Power Act. It includes, among other elements: energy conservation program, a recommendation for research and development; a methodology for determining quantifiable environmental costs and benefits; a twenty year demand forecast; a forecast of power resources that the Bonneville Power Administration will need to meet its obligations; an analysis of reserve and reserve reliability requirements; and a surcharge methodology. The plan also includes the Council's Fish and Wildlife Program, developed pursuant to other procedural requirements under the Act.

FOR FURTHER INFORMATION CONTACT: If you would like copies of any of these documents, please contact the Council's central office. the Fourth Power Plan is publication 98–22, the technical appendices are publication 98–22A, the Addendum is publication 98–23, and the Response to Comments is publication 98–24. You may order all or any part of this series you wish. The technical appendices may be ordered by individual sections. Please call 1–503–222–5161 or 1–800–222–3355. You may FAX your request to 1–503–795–3370. If you wish to make a request by e-mail, please e-mail to comments@nwppc.org. All of these documents are also available on the Council's web-site: http;//www.nwppc/downdocs.htm. Please contact the Council's public affairs division for further information.

Stephen L. Crow,

Executive Director.

[FR Doc. 98–20978 Filed 8–5–98; 8:45 am]

BILLING CODE 6450–AJ–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Appeal Under the Railroad Retirement and Railroad Unemployment Act.

(2) *Form(s) submitted:* HA–1.

(3) *OMB Number:* 3220–0007.

(4) *Expiration date of current OMB clearance:* 10/31/1998.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,350.

(8) *Total annual responses:* 1,350.

(9) *Total annual reporting hours:* 449.

(10) *Collection description:* Under section 7(b)(3) of the Railroad Retirement Act and section 5(c) of the Railroad Unemployment Insurance Act, a person aggrieved by a decision on his or her application for an annuity or other benefit has the right to appeal to the RRB. The collection provides the method for the appeal action.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–21055 Filed 8–5–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40283; File No. SR–CBOE–98–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. and Amendments Nos. 1, 2 and 3 Relating to Enhancements to the Exchange's Order Execution System

July 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 16, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On June 23, 1998, the CBOE submitted to the Commission Amendment No. 1 to the proposed rule change.[2] On July 15, 1998, the CBOE submitted to the Commission Amendment No. 2 to the proposed rule change.[3] On July 21, 1998, the CBOE submitted to the Commission Amendment No. 3 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is amending its rule governing the execution of orders by an Order Book Official (''OBO'') or the Designated Primary Market-Maker (''DPM'') book staff to provide for the electronic execution of certain orders on the ''live ammo'' screen. This change is being accommodated by an enhancement to the Exchange's order execution systems.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE 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 CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE is amending one of its rules to allow an OBO or a DPM to designate orders to be electronically executed against market-makers standing in the crowd. Currently, an OBO or a DPM, acting in his or her capacity as an OBO, represents in the trading crowd the orders that have been placed on the customer limit order book. These orders are represented individually when they become marketable and are traded with the market-makers standing in the crowd. The OBO (or DPM) is able to determine which orders are marketable by reviewing his or her ''live ammo'' screen, which is an electronic book screen that displays orders that are market orders or limit orders that improve the market.[5] However, when the live ammo screen experiences a large influx of orders it becomes difficult for the OBO (or DPM) to represent and execute these orders individually in a timely manner and a sizable backlog can develop. This is particularly true during opening rotations when a large number of orders can build up on the ''live ammo'' screen.

To speed the process of the OBO or DPM executing live ammo orders, the CBOE is proposing to change its order execution systems to allow the OBO or DPM to select orders to be executed electronically. The OBO or DPM may select for electronic execution one order individually or he or she may, after reviewing the orders on the screen, select all orders displayed on a live ammo page (currently a page may contain up to thirteen orders).[6] Orders selected for electronic execution against a participating market-maker must meet the same criteria as those for Retail Automatic Execution System (''RAES'') eligible orders. To be eligible to be executed on RAES, the order must be a marketable limit order that is for the number of contracts established by the Equity Floor Procedure Committee for that options class (or fewer), pursuant to Rule 6.8(e).[7] Orders that are not RAES eligible when the page is selected will remain on the live ammo screen. Any market-maker who is signed onto RAES at the time the OBO or DPM selects the order or orders for electronic execution will be eligible to be electronically assigned as the contra-party on the trade.

In Amendment No. 1, the CBOE altered the proposed rule's language, adding conditions for when the OBO or DPM may route a live ammo order for electronic execution.[8] The OBO or DPM may do so when he or she believes there are unusual market conditions or when there is a large influx of orders to the live ammo screen. Moreover, the OBO or DPM must consult with the crowd before routing a live ammo order or orders for electronic execution.

In Amendment No. 2, the CBOE added language to the proposed rule change, explaining that the rule would operate notwithstanding the priority provisions of paragraphs (a) and (b) of CBOE Rule 6.45.[9] CBOE Rule 6.45 gives priority to some bids and offers, because they were made earlier in time, over other bids and offers. The Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] In Amendment No. 1, the Exchange changed the proposed rule language, clarifying when the new provision may be exercised. The Exchange also further explained how the altered system operates. *See* Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 23, 1998 (''Amendment No. 1'').

[3] In Amendment No. 2, the Exchange further detailed the operation of its computer system and altered the proposed rule language to clarify the new rule's interaction with CBOE Rule 6.45. *See* Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Richard Strasser, Assistant Director, Division, Commission, dated July 10, 1998 (''Amendment No. 2'').

[4] In Amendment No. 3, the Exchange further explains the new rule's interaction with CBOE Rule 6.45. *See* Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Richard Strasser, Assistant Director, Division, Commission, dated July 20, 1998 (''Amendment No. 3'').

[5] There are generally six ways an order may be routed to the live ammo screen. First, if a customer submits a cancel/replace order to the market for an order already held by the book that order will go to the live ammo screen. Second, if a customer submits a cancel/replace order to a limit price that betters the same-side market quote for an order held by the book, that order will go to the live ammo screen. Third, market orders received through the Exchange's order shoe and that are manually booked will go to the live ammo screen. Fourth, limit orders that better the same-side market quote, that are received through the order shoe, and that are manually booked will go to the live ammo screen. Fifth, limit orders that better the same-side market quote and that are routed directly to the Electronic Book when the routing parameters have been set at ''0'' will go to the live ammo screen. Sixth, marketable limit orders that are electronically booked from a floor broker's PAR workstation will go to the live ammo screen. *See* Amendment No. 2.

[6] Amendment No. 1 clarified that, in addition to accepting one order or a whole page or orders, the system also can accept any number of orders from the same page at one time. *See* Amendment No. 1.

[7] Most option classes have an eligible order size for RAES of ten contracts. Some have an eligible order size of twenty contracts.

[8] *See* Amendment No. 1.

[9] *See*Amendment No. 2.

explains that it is possible that a RAES-eligible live ammo order may be executed prior to a non-RAES eligible order received earlier.[10] The Exchange believes these occurrences will be infrequent for two reasons. First, the non-RAES-eligible order must be for the same series as the RAES-eligible order that is traded for there to be an interruption of the normal priority principles. Second, for the RAES-eligible order to trade ahead of the non-RAES-eligible order, the limit price of the non-RAES-eligible order must be at the CBOE's quoted market because that is the price at which the RAES-eligible order will be executed. When the limit for the larger non-RAES-eligible order is at the market, the CBOE book staff will act to execute that order promptly. Therefore, it is only in those cases where the CBOE book staff has not had the opportunity to fill those executable non-RAES-eligible live ammo orders before sending orders for electronic execution that the RAES-eligible order will be filled before the non-RAES-eligible order that has time priority. Based on its experience with how book staffs generally handle their orders, the Exchange believes that, once the system is in place, the book staff will usually attempt to fill the larger orders that were first in time before they send live ammo orders to be electronically executed. Alternatively, one member of the book staff may seek to execute the larger non-RAES eligible orders at the same time another member sends the RAES-eligible live ammo orders to be electronically executed.

Regardless of the possibility that RAES-eligible live ammo orders may trade ahead of non-RAES-eligible orders, the Exchange believes that the current proposal is in the best interest of the CBOE marketplace and public customers. This is because the system will only be employed when the OBO or DPM believes there to be unusual market conditions or when there is a large influx of orders to the live ammo screen. In these situations the employment of this system will allow the book staff and the crowd to attend to the execution of other business and will improve the turnaround time of many customer orders. Any non-RAES-eligible live ammo orders that were not executed before the live ammo orders were sent to be electronically executed could be executed at this time assuming they are marketable.

The Exchange also notes that the system will retain book priority. This means, for example, if the book staff selects a page of live ammo orders to be electronically executed at the time the CBOE's best bid or offer on the limit order book equals the prevailing market quote, no live ammo orders will be executed but those orders will remain on the live ammo screen. Only after those booked orders have been executed (or the market changes) will the book staff be able to effectively send the live ammo orders to be electronically executed.[11]

In general, the proposed system change will significantly improve the turnaround time of customer orders and will allow book staff and market-makers in the crowd to attend to the transaction of other orders during busy times. The Exchange also believes this system change will alleviate the need to declare fast markets in certain situations because it will allow for the faster execution of orders and will prevent orders in the live ammo screen from becoming backlogged.

Because the system enhancements to the Exchange's order execution systems will allow for the OBO or DPM to avoid a backlog of orders on the live ammo screen and thus to allow market-makers and the book staff to attend to other business, the Exchange believes this rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act in that it would foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, and would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any 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 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 publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–27 and should be submitted by August 27, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20967 Filed 8–5–98; 8:45 am]

BILLING CODE 8010–01–M

[10] In Amendment No. 3, the Exchange clarified that the time priority provisions of CBOE Rule 6.45 will continue to govern the sequence in which RAES-eligible orders are executed using the new electronic execution feature. *See* Amendment No. 3.

[11] *See* Amendment No. 2.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40288; International Series Release No. 1150; File No. SR–EMCC–98–04]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Establishing Interim Margin and Loss Allocation Procedures

July 31, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 13, 1998, Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by EMCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, EMCC will establish interim margin and loss allocation procedures for U.S. interdealer brokers and for U.S. firms whose only business with EMCC consists of clearing for interdealer brokers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Most transactions in emerging markets debt are conducted on a blind brokered basis through interdealer brokers. Currently, only one interdealer broker self-clears emerging markets debt transactions through EMCC. The remaining interdealer brokers clear such transactions through a clearing firm.

EMCC recognizes that a clearing firm has little control over its positions at EMCC because its positions are determined by dealers participating in the market. Prior to beginning operations, EMCC realized that with a limited number of members a clearing firm could be required to post a substantial amount of collateral with EMCC. EMCC now believes that with its limited number of members it may not be economical for a clearing firm to participate in EMCC under its current margin procedures. Therefore, EMCC has determined that interim margin procedures should be adopted.

Under this proposed rule change, EMCC is adopting interim margin and loss allocation procedures for a period of one year or such shorter period of time as determined by EMCC's Board.[3] The interim margin procedures will apply to interdealer brokers and to firms whose only business with EMCC in emerging markets instruments consists of clearing for interdealer brokers (sometimes referred to as ''special members''). Interdealer brokers and clearing firms will be subject to a constant base clearing fund requirement based upon EMCC staff simulations of margin requirements. The base requirement will be equal to the staff's best estimate of the approximate probably recurring upper bound of the daily margin calculation for the firm given current market conditions and the business and market share of the firm.[4]

Under the interim margin procedures, EMCC will not collect daily margin calculations over the base requirement if a firm's resulting uncollateralized exposure does not exceed the lesser of: (1) ten percent of the excess net capital of the firm or (2) fifteen percent of EMCC's current aggregate clearing fund. Thus, EMCC will only collect additional margin under the interim margin procedures if the difference between the daily margin calculation and a firm's base requirement exceeds ten percent of the firm's excess net capital or fifteen percent of EMCC's current aggregate clearing fund.

Any margin call required to be paid under the interim margin procedures, other than the base requirement or any adjustments to it, will be paid by the affected firm and by EMCC's dealer members as follows. First, on each day, each special member will produce a report under methodology approved by EMCC that sets forth (a) the approximate percentage of leg-out transactions that are with dealers that have funded EMCC (''funding non-member dealer percentage'') and (b) the approximate percentage of leg-out transactions that are with others (''firm percentage''). Second, the special member required to pay additional margin will post the percentage of the margin call equal to the firm percentage, and EMCC's dealer members will post the percentage of the margin call equal to the funding non-member dealer's percentage. This amount will be charged to all dealer members in proportion to their current clearing fund requirement (exclusive of any amounts charged for increased event risk).

The collateral posted by dealer members under the interim margin procedures will be considered collateral of the special member and will be applied against losses after the collateral posted by the special member itself. Any amounts not so applied will be returned to the dealer members in proportion to the amounts they deposited. However, EMCC notes that in the event of the failure of a dealer member putting up collateral for a special member's margin obligation, the collateral will be considered part of the dealer's collateral and will be applied against the dealer's losses before being returned to the dealer.

EMCC's normal loss allocation rules provide that in the event of a failure of a dealer member, losses from blind brokered transactions will be borne by the entire membership in proportion to their average daily final margin calculations over the prior thirty days and losses due to direct (*i.e.*, non-brokered) transactions are borne by the actual counterparties. Losses are so allocated after the failing firm's clearing fund is applied to the losses. During the period in which the interim margin and loss allocation procedures are in effect, brokered transactions will be considered blind brokered transactions in the event of the failure of a dealer member but only to the extent that the leg-out transactions are with funding non-member dealers. For purposes of

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] Should EMCC's Board decide that the use of the interim margin and loss allocation procedures should be terminated before the end of the one year period, EMCC must file a proposed rule change pursuant to Section 19(b)(2) of the Act and obtain Commission approval before terminating the interim procedures.

[4] EMCC expects that the instances of uncollected exposure under the interim margin procedures should be infrequent. To the extent that market share or size changes in favor of a firm such that its uncollateralized exposure calculations become frequent, the Board may increase the firm's base requirement. Conversely, if market share or size changes such that a firm's instances of uncollateralized exposure become very infrequent, the Board may reduce the firm's base requirement.

calculating the *pro rata* loss allocation, the average daily margin calculation for each member will be determined without regard to the interim margin procedures except that any daily margin calculation for a special member that exceeds the special member's base requirement shall be considered as the base requirement.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change should provide EMCC with margin that is adequate to protect EMCC from financial exposure if an interdealer broker or clearing firm experiences financial difficulty while still providing a clearing fund framework which does not deter interdealer brokers and clearing firms from joining EMCC. Therefore, the Commission believes that the proposed rule change is consistent with EMCC's safeguarding obligations under Section 17A(b)(3)(F) of the Act.

EMCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval should immediately encourage additional participation in EMCC which should in turn reduce risk to those involved in emerging market debt transactions.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–98–04 and should be submitted by August 27, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–98–04) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–21059 Filed 8–5–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)93)(F).

[7] CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40286; File No. SR–NASD–98–38]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Approving Proposed Rule Change Relating to NASD's Order Audit Trail System and Recordkeeping Rules

July 31, 1998.

I. Introduction

On May 22, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD''), submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Books and Records Rule 3110 and NASD Order Audit Trail System (''OATS'') Rules 6954 and 6957 to clarify and modify the recordkeeping requirements associated with the OATS rules.

On June 10, 1998, the proposed rule change was published for comment in the **Federal Register** and notice was given that three non-substantive, technical revisions to NASD Rules 3110 and 6957, which were concerned solely with the administration of the NASD, had become effective pursuant to Section 19(b)(3)(A) of the Act[3] and subparagraph (e)(3) of Rule 19b–4[4] thereunder[5]. This order approves the portions of the proposal relating to substantive amendments to the OATS recordkeeping requirements.

II. Background and Description of the Proposal

On March 6, 1998, the Commission approved NASD OATS Rules 6950 through 6957.[6] The OATS rules require member firms to capture and record specific information related to the handling or execution of orders for equity securities in The Nasdaq Stock Market (''Nasdaq''). Firms must then report that information to the NASD through OATS. The rules also require members to synchronize their business

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 19b–4(e)(3).

[5] *See* Securities Exchange Act Release No. 40069 (June 4, 1998) 63 FR 31820.

[6] *See* Securities Exchange Act Release No. 39729 (March 6, 1998) 63 FR 12559 (March 13, 1998) (order approving File No. SR–NASD–97–56).

clocks to one time source. At the same time, the Commission also approved new NASD Rule 3110(h), which requires members to record and maintain certain information that is relevant to the OATS data reporting requirement.

The NASDR proposes to amend the OATS Rules and the books and records requirements that apply specifically to OATS data. The proposal would revise OATS Rule 6954(c) by adding a new paragraph (6). Rule 6954(c) sets forth the order information that must be recorded under the OATS rules when an order is transmitted, either from one department to another within a member firm or to another member. Rule 6954(c) does not, however, presently contain a requirement regarding the transmission of an order to a non-member such as a foreign broker-dealer or a foreign exchange. The NASDR proposes to add new paragraph (6) to Rule 6954(c) to require members to record certain information when an order is transmitted to a non-member, including the fact that it was so transmitted. NASD members will be required to report this information to OATS pursuant to NASD Rule 6955. This additional information will enable the NASDR to track an order that a member has received and reported to OATS that is then routed to a non-member.

The NASDR also proposes to revise both OATS Rule 6954(a)(4) and Rule 3110(h) to set forth specific record-keeping requirements. OATS Rules 6954(a)(1) and (a)(4) require members to record specified information and to retain records of that information; Rule 3110(h) requires members to record and maintain information required by OATS. However, these rules presently do not specify how long the records must be maintained or the requirements that apply when members wish to utilize micrographic media or electronic storage media to maintain such records. The NASDR proposes to add new language to both Rule 6954(a)(4) and Rule 3110(h) to make explicit the record-keeping requirements related to OATS data. The rules have been revised to specifically reference the record retention period specified in SEC Rule 17a–4(b) and the conditions set forth in SEC Rule 17a–4(f) for reproducing records on micrographic media or by means of electronic storage media.

In addition, the NASDR proposes to revise Rule 310(h)(1) to require members to record and maintain information related to an ''order,'' as that term is defined in OATS Rule 6951(j). As stated above, new Rule 3110(h) was adopted to require members to record and maintain information relevant to the OATS data recording and reporting requirements. The NASDR proposes to limit Rule 3110(h) to require members to record and maintain information only with respect to an ''order'' in Nasdaq equity securities, as defined by OATS Rule 6951(j).

Finally, the NASDR proposes to revise Rule 6957(d) to indicate the effectiveness dates for compliance with the proposed amendments to Rule 3110(h).

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[7] Specifically, the Commission believes the proposal is consistent with the requirements of Section 15A(b)(6) of the Act[8] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

The Commission notes that the proposed addition of paragraph (6) to Rule 6954(c) will require member firms to record information relating to the transmission of orders to non-members, such as foreign broker-dealers and foreign exchanges. The Commission believes that this information, which will be reported to OATS pursuant to Rule 6955, should enhance the NASDR's ability to track transactions in Nasdaq equity securities. OATS was designed primarily to improve the NASDR's ability to monitor member firms' transactions in Nasdaq equity securities for possible violations of NASD rules or of the federal securities laws, a purpose that is consistent with Section 15A of the Act.[9] Because the current proposal will enhance the NASD's ability to gather information required by the OATS rules, it too is consistent with the Act.

The proposed amendments relating to the recordkeeping requirements applicable to OATS are designed to provide more specific information regarding the permissible maintenance of required records. Specifically, the proposal specifies the length of time required records must be maintained and the requirements applicable to the use of micrographic or electronic storage media. The proposal also specifically references the record retention period and conditions set forth in the Commission's Rule 17a–4. The Commission believes that the proposed amendments should help to clarify member firms' record retention requirements related to OATS data.

The Commission notes that the proposal would reference in NASD Rule 3110(h) the definition of the term ''order'' set forth in OATS Rule 6951(j). The Commission believes that the NASDR's efforts to achieve consistency and uniformity in the definitions used in the NASD rules are reasonable and should ease the compliance burdens of member firms.

Finally, the Commission notes that the proposal would establish effective dates for compliance with the proposed amendments to Rule 3110(h). The Commission believes that the proposed deadlines for compliance are reasonable, given the implementation schedule of the OATS rules, set forth in NASD Rule 6957(a)–(c).

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–98–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20968 Filed 8–5–98; 8:45 am]

BILLING CODE 8010–01–M

[7] In approving this rule, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78o–3.1.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–+3(a)(12).

DEPARTMENT OF STATE

[Public Notice 2866]

Bureau of Political-Military Affairs; Imposition of Nonproliferation Measures Against Entities in Russia

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Acting Secretary of State has determined that seven entities in Russia have engaged in missile technology proliferation activities that require the imposition of measures pursuant to Executive Order No. 12938 of November 14, 1994, as amended by Executive Order No. 13094 of July 28, 1998.

EFFECTIVE DATE: July 30, 1998.

FOR FURTHER INFORMATION CONTACT: On general issues; Vann H. Van Diepen, Director, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State (202–647–1142). On import ban issues: John T. Roth, Director, Policy Planning and Program Management,

Office of Foreign Assets Control, Department of Treasury (202–622–2500).

SUPPLEMENTARY INFORMATION: Pursuant to the authorities vested in the President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (''IEEPA''), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), and section 301 of title 3, United States Code, and Executive Order No. 12938 of November 14, 1994, as amended by Executive Order No. 13094 of July 28, 1998, the Acting Secretary of State determined on July 30, 1998 that the following foreign persons have engaged in proliferation activities related to Iran's missile programs that require the imposition of measures pursuant to sections 4(b), 4(c) and 4(d) of Executive Order No. 12938:

Baltic State Technical University (including at 1/21, 1-ya Krasnoarmeiskaya Ul., 198005 St. Petersburg, Russia);
Europalace 2000 (including at Moscow, Russia);
Glavkosmos (including at 9 Krasnoproletarskaya St., 103030 Moscow, Russia);
Grafit (aka State Scientific Research Institute of Graphite or NIIGRAFIT) (including at 2 Ulitsa Elektrodnaya, 111524 Moscow, Russia);
INOR Scientific Enter (including at Moscow, Russia);
MOSO Company (including at Moscow, Russia); and
Polyus Scientific Production Association (including at 3 Ulitsa Vvedenskogo, 117342 Moscow, Russia).

Accordingly, until further notice and pursuant to the provisions of Executive Order 12938, the following measures are imposed on these entities, their subunits and successors:

1. All departments and agencies of the United States Government shall not procure or enter into any contract for the procurement of any goods, technology or services from these entities, and shall terminate any existing contracts;

2. All departments and agencies of the United States Government shall not provide any assistance to these entities, and shall not obligate further funds for such purposes;

3. The Secretary of the Treasury shall prohibit the importation into the United States of any goods, technology, or services produced or provided by these entities, other than information or informational materials within the meaning of section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

These measures shall be implemented by the responsible departments and agencies as provided in Executive Order 12938.

Dated: August 3, 1998.

John Barker,

Acting Assistant Secretary of State for Political Military Affairs.

[FR Doc. 98–21191 Filed 8–5–98; 8:45 am]

BILLING CODE 4710–25–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Free Trade Area of the Americas

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for public comment on the Free Trade of the Americas (FTAA) joint public-private sector Experts Committee on Electronic Commerce (Experts Committee); identification of private sector experts in electronic commerce who may wish to participate in the work of the Experts Committee.

SUMMARY: The FTAA Experts Committee on Electronic Commerce has been established by the 34 countries in the Western Hemisphere participating in the Free Trade Area of the Americas. The Trade Policy Staff Committee (TPSC) invites public comment on the work plan of the Experts Committee. In addition, the TPSC seeks to identify U.S. private sector experts on electronic commerce who may be interested in participating in the work of the Experts Committee; interested members of the public are invited to submit written notice of their interest and their qualifications.

DATES: Written comments on the the Experts Committee and expressions of interest in participating in the work of the Committee should be submitted no later than September 8, 1998.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–3475. All questions concerning the Experts Committee should be directed to Regina Vargo, Deputy Assistant Secretary for the Western Hemisphere, U.S. Department of Commerce (202) 482–5324, Rvargo@USITA.GOV.

SUPPLEMENTARY INFORMATION: On April 18–19, 1998, President Clinton and his 33 counterparts in the Western Hemisphere initiated negotiations to create the Free Trade Area of the Americas (FTAA) by the year 2005 and to achieve concrete progress toward that objective by the end of the century. The leaders established a general framework for the netotiations, including a Trade Negotiations Committee (TNC), composed of the 34 vice ministers responsible for trade, to oversee the negotiations. They agreed to nine initial negotiating groups, a consultative group and two committees, one of which is a joint public-private sector Experts Committee on Electronic Commerce. At its June 1998 meeting in Buenos Aires, the TNC agreed that the Experts Committee will be chaired by Mr. Dale Marshall of Barbados. It also was agreed that the initial meeting of the Experts Committee would be held before the end of October in Miami.

Experts Committee Terms of Reference: The objective of the Experts Committee is to make recommendations to trade ministers on how to increase and broaden the benefits of electronic commerce and how electronic commerce should be dealt with in the context of the FTAA negotiations. Four weeks before the October 1999 ministerial meeting, the Experts Committee is to provide recommendations to the TNC. In order to develop its recommendations, the Experts Committee will focus on:

- Increasing understanding of the potential benefits of electronic commerce to countries in the hemisphere;
- Identifying the environment that will allow electronic commerce to flourish;
- Discussing infrastructure questions; and
- Identifying how electronic commerce can facilitate the operation of trade obligations.

Experts Committee Private Sector Representation: The Experts Committee will consist of both public and private sector representatives. Individual governments will identify private sector participants with a view toward balanced hemispheric representation in terms of geography and electronic commerce issue expertise. Although the FTAA countries have not yet established the details on private sector representation, including composition, number and final selection process, the TPSC seeks to identify U.S. private sector experts on electronic commerce who may be interested in participating in the work of the Committee.

Public Comments

To prepare for the initial meeting of the Experts Committee in October 1998,

the TPSC invites written comments on how to maximize the effectiveness of private sector participation and on possible elements of a work plan to implement the Committee's terms of reference, described above. In addition, in order to assist the TPSC in identifying U.S. private sector experts on electronic commerce who may be interested in participating in the work of the Committee, members of the public are invited to submit written notice of their interest and describe their qualifications. Qualifications of interest include: demonstrated expertise in one or more aspects of electronic commerce; knowledge of the Western Hemisphere, including established contacts with foreign private sector interests in the region; an ability and willingness to broadly solicit views from and disseminate information to private sector interests that provide Internet services, network services, content and equipment, or that represent the views of other Internet experts in the private sector, and familiarity with U.S. and foreign trade and investment policies and obligations.

Those persons wishing to submit written comments should provide twenty (20) typed copies (in English) to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 501, 600 17th Street, N.W., Washington, D.C. 20508. Comments should state clearly the position taken and should describe the specific information supporting that position.

If the submission contains business confidential information, twenty copies of a confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 98–21029 Filed 8–5–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 USC Chapter 35). Section 3507 of Title 44 of the United States Code, requires that agencies prepare a notice for publication in the **Federal Register**, listing information collection request submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

The **Federal Register** Notice with a 60-day comment period soliciting comments on information collection 2120–0040 was published on March 9, 1998 [63 FR 11472–11473].

DATES: Comments on this notice must be received on or before September 8, 1998.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., (202) 267–9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aviation Maintenance Technician Schools.

OMB Control Number: 2120–0040.

Form(s): FAA Form 8310–6.

Type of Request: Extension of a currently approved collection.

Affected Public: Business and other for profit, States and local governments.

Abstract: CFR part 147 prescribes requirements for certification and operation of aviation mechanic schools. The information is necessary to ensure that Aviation Maintenance Technician Schools meet the minimum requirements for procedures and curriculum set forth by the FAA. Also, it is necessary for the FAA to develop minimum standards for properly qualified persons who would enter the aviation industry.

Estimated Burden: The estimated total annual burden is 74,015 hours.

Addresses: Written comments on the DOT information collection request should be forwarded, within 30 days of publication, to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, ATTN: FAA Desk Officer. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

Comments are invited on: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; 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 respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 30, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–21002 Filed 8–5–98; 8:45 am]

BILLING CODE 4910–62–P

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 comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice requesting an emergency approval on this information collection was published on May 13, 1998 [63 FR 26675]. The FHWA also published an NPRM on April 20, 1998 [63 FR 19457] which responded to a statutory mandate to amend the 60-year old regulations by defining and describing record of duty status supporting documents.

DATES: Comments must be submitted on or before September 8, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund or Mr. David R. Miller, Office of Motor Carrier Research and Standards, (202) 366–4009, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Driver's Record of Duty Status.

OMB Number: 2125–0016.

Type of Request: Revision of a currently approved collection.

Affected Public: Motor carriers and drivers.

Abstract: FHWA is appending the ''Time Records'' collection of information (#2125–0196) into this collection. Motor carriers operating in interstate commerce are required to limit their drivers' hours of service. 49 CFR Section 395.8 requires that the drivers record their hours of service to assure compliance with the maximum driving and on-duty time limitations set forth in the Federal Motor Carrier Safety Regulations (FMCSRs). The record of duty status (RDS) is the primary regulatory tool used by Federal and State enforcement personnel and motor carriers to determine compliance with the maximum time limitations prescribed in the FMCSRs. Compliance with the hours of service requirement is a factor in determining a motor carrier's overall safety compliance rating. It is a valuable instrument to both government and industry to help ensure the safety of the general public by reducing the number of fatigued drivers on highways. This information collection is necessary for the FHWA to continue to determine compliance with the regulations.

Estimated Annual Burden Hours: 14,284,339.

Number of Respondents: 2,306,443.

ADDRESS: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FHWA Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; 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 respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on July 30, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–21003 Filed 8–5–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Office of the Secretary, DOT

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 USC Chapter 35). Section 3507 of Title 44 of the United States Code, requires that agencies prepare a notice for publication in the **Federal Register**, listing information collection request submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

The **Federal Register** Notice with a 60-day comment period soliciting comments on information collection 2120–0569 was published on March 9, 1998 [63 FR 11472–11473].

DATES: Comments on this notice must be received on or before September 8, 1998.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., (202) 267–9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Airports Grants Program.

OMB Control Number: 2120–0569

Form(s): 5100–100; 5100–108; 5100–125; 5100–126; 5370–1.

Type of Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Abstract: The FAA collects information from airport sponsors and planning agencies in order to administer the Airports Grants Program. Data is used to determine eligibility, ensure proper use of Federal funds, and ensure project accomplishments.

Estimated Burden: The estimated total annual burden is 67.714 hours.

Addresses: Written comments on the DOT information collection request should be forwarded, within 30 days of publication, to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, DC 20503, ATTN: FAA Desk Officer. Written comments to OMB are best assured of having their full effect if OMB receives them within 30 days of publication. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

Comments are invited on: whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; 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 respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 28, 1998.

Phillip A. Leach,

Clearance Officer, United States, Department of Transportation.

[FR Doc. 98–21004 Filed 8–5–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps for Monterey Peninsula Airport, Monterey, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Monterey Peninsula Airport District, for Monterey Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is July 24, 1998.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriguez, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303, Telephone: 650/876–2805. Documents reflecting this FAA action may be reviewed at the same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Monterey Peninsula Airport are in compliance with applicable requirements of part 150, July 24, 1998.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways such operations will affect such maps. The Act requires such maps to be developed in consultation with interested parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Monterey, California. The specific maps under consideration are Figure 4–2, ''Year 1996 Noise Exposure Map'' and Figure 4–3, ''Year 2002 Noise Exposure Map,'' in the submissions. The FAA has determined that these maps for Monterey Peninsula Airport are in compliance with applicable requirements. This determination is effective on July 24, 1998. FAAs determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.16 of FAR part 150, that the statutory required consultation has been accomplished.

Copies of the noise exposure maps of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Community and Environmental Needs Division, Room 621, 800 Independence Avenue, SW., Washington, DC. 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303

Mr. Denis Horn, General Manager, Monterey Peninsula Airport District, 200 Fred Kane Drive, Suite 200, Monterey, California 93940

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California, on July 24, 1998.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 98–21073 Filed 8–5–98; 8:45 am]

BILLING CODE 1410–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–16]

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 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 FAAs 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 27, 1998.

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, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTSfaa.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: Tawana Matthews (202) 267–9783 or Terry Stubblefield (202) 267–7624, Office 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, D.C., on August 3, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29275
Petitioner: Kodiak Expediting, Inc.
Sections of the FAR Affected: 14 CFR 61.133(b)(1)
Description of Relief Sought: To permit Kodiak to conduct passenger carrying operations on cross-country flights in excess of 50 nautical miles without holding an instrument rating in the same category and class of aircraft listed on your commercial pilot certificate.

Docket No.: 29234
Petitioner: Cowboy Transportation Company
Sections of the FAR Affected: 14 CFR 135.421(c) and (d)
Description of Relief Sought: To permit Cowboy Transportation Company to conduct limited, single pilot commercial operations under instrument flight rules.

Dispositions of Petitions

Docket No.: 29177
Petitioner: Confederate Air Force, Inc.
Sections of the FAR Affected: 14 CFR 91.315, 91.319, 119.5(g), and 119.21(a)
Description of Relief Sought/ Disposition: To permit Confederate Air Force to operate its fleet of former military airplanes that hold either a limited airworthiness certificate or an experimental airworthiness certificate for the carriage of passengers on local educational flights for compensation and hire. This grant of exemption is subject to certain conditions and limitations. *GRANT, July 24, 1998, Exemption No. 6802.*

Docket No.: 29257
Petitioner: Priority Air, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)
Description of Relief Sought/ Disposition: To permit Priority Air to operate its Cessna 414A Chancellor and its Piper Saratoga PA32–301T without a TSO–C112 (Mode S) transponder installed. *GRANT, July 24, 1998, Exemption No. 6801.*

Docket No.: 28503
Petitioner: Mr. Kenneth R. Pearce
Sections of the FAR Affected: 14 CFR 91.109(a) and (b)(3)
Description of Relief Sought/ Disposition: To permit Mr. Pearce to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. This grant is subject to certain conditions and limitations. GRANT, July 24, 1998, Exemption No. 6527A.

Docket No.: 29286
Petitioner: Embry-Riddle Aeronautical University
Sections of the FAR Affected: 14 CFR 141.53(c)(1)
Description of Relief Sought/ Disposition: To permit students currently enrolled in Embry-Riddle Aeronautical University's flight training curriculum to complete their courses under that training curriculum by September 4, 1998, subject to certain conditions and limitations. *GRANT, July 24, 1998, Exemption No. 6800.*

[FR Doc. 98–21081 Filed 8–5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualification issues.

DATES: The meeting will be held on September 10 at 2 p.m.

ADDRESSES: The meeting will be held at the Regional Airlines Association, Second floor, 1200 19th St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Regina L. Jones, (202) 267–9822, Office of Rulemaking, (ARM–100) 800 Independence Avenue, SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss training and qualification issues. This meeting will be held September 10, 1998 at 2 p.m., at the Regional Airlines Association. The agenda for this meeting will include a progress report from the Air Carrier Pilot Pre-Employment Screening Standards and Criteria Working Group, the presentation of the Licensing Harmonization Working Group work plan, and the ARAC's review, comment and approval of the Licensing Harmonization Working Group work plan.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on July 31, 1998.

Thomas Toula,

Assistant Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–21075 Filed 8–5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on August 24, 1998, at 1:30 p.m.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Stubblefield, Transportation Industry Analyst, Office of Rulemaking (ARM–208), 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 267–7624; FAX: (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss and finalize issues applicable to aircraft type certification procedures for changed products. This meeting will be held on August 24, 1998, at 1:30 p.m. at the General Aviation Manufacturers Association, 1400 K Street, NW, Suite 801, Washington, DC.

The agenda for this meeting will include dispositioning ballot vote responses from ARAC and International Certification Procedures Harmonization Working Group members on the proposed final product for type certification procedures for changed products. It will also address preparation of the final work product for transmittal to the FAA before the September 1, 1998 due date. Members of the public may obtain copies of these materials by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT**.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on July 31, 1998.

Randall Petersen,

Acting Assistant Executive Director for Aircraft Certification Procedures, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–21076 Filed 8–5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[RTCA Special Committee 165]

Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–165 meeting to be held August 21, 1998, starting at 9 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Welcome and Introductions; (2) Review Summary of the Previous Meeting; (3) Chairman's Remarks; (4) Developments Relevant to SC–165: a. AMCP Working Group (WG)–A on AMSS; b. AMS(R)S Spectrum Issues; c. EUROCAE WG–55; d. Industry, Users, Government Comments; (5) Review of Working Group Activities: a. WG–1, AMSS Avionics Equipment Minimum Operational Performance Standards; b. WG–3, System/Service Performance Criteria; c. WJG–5, AMS(R)S Satcom Voice; (6) Review/Approve Change 1, DO–215A; (7) Other Business; (8) Time and Place of Next Meeting; (9) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 31, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–21080 Filed 8–5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Hattiesburg-Laurel Regional Airport, Hattiesburg, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue a PFC at Hattiesburg-Laurel Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 8, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David G. Senne, Executive Director of the Hattiesburg-Laurel Regional Airport Authority at the following address: 1002 Terminal Drive, Moselle, MS 39503.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Hattiesburg-Laurel Regional Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Rans D. Black, Program Manager, FAA Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306, telephone number 601–965–4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Hattiesburg-Laurel Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 30, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Hattiesburg-Laurel Regional Airport

Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 26, 1998.

The following is a brief overview of the application.

PFC Application Number: 98–02–C–00–PIB.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1998.

Proposed charge expiration date: June 1, 2001.

Total estimated PFC revenue: $89,593.

Brief description of proposed project(s):

1. Acquire portable telescoping walkway to be used by enplaning and deplaning passengers.

2. Acquire portable passenger lift device for the safety and convenience of disabled passengers.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under the **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Hattiesburg-Laurel Regional Airport Authority.

Issued in Jackson, Mississippi, on July 30, 1998.

Rans Black,

Acting Manager, Airports District Office, Southern Region, Jackson, Mississippi.

[FR Doc. 98–21074 Filed 8–5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4165]

Notice of Receipt of Petition for Decision That Nonconforming 1991–1998 Ford Explorer Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991–1998 Ford Explorer multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1991–1998 Ford Explorers manufactured for sale in Venezuela 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 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 8, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 10 am to 5 pm).

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 1991–1998 Ford Explorers that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1991–1998 Ford Explorers that were manufactured for sale in the United States and certified by their manufacturer, Ford Motor Company, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991–1998 Ford Explorers 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 the non-U.S. certified 1991–1998 Ford Explorers, 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 the non-U.S. certified 1991–1998 Ford Explorers 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,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System* (with respect to 1991 through 1995 model year vehicles; remaining model years are exempt), 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 the non-U.S. certified 1991–1998 Ford Explorers comply with the Bumper Standard found in 49 CFR part 581 and with the Theft Prevention Standard found in 49 CFR part 541.

Petitioner also contends that the vehicles 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 that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

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. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:*

(a) Installation of 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; (c) replacement of the driver's side air bag and knee bolster with U.S. model components on 1996 model year vehicles that are not so equipped and replacement of both the driver's and passenger's side air bags and knee bolsters with U.S.-model components on 1997 and 1998 model year vehicles that are not so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

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 the vehicles to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 10 am to 5 pm). 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: August 3, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–21070 Filed 8–5–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4166]

Notice of Receipt of Petition for Decision That Nonconforming 1991–1996 Porsche 928 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991–1996 Porsche 928 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 1991–1996 Porsche 928 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 8, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 10 am to 5 pm.)

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 of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1991–1996 Porsche 928 passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1991–1996 Porsche 928 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 1991–1996 Porsche 928 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 1991–1996 Porsche 928 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 1991–1996 Porsche 928 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 1991–1996 Porsche 928 passenger cars comply with the Bumper Standard found in 49 CFR part 581 and with the Theft Prevention Standard found in 49 CFR part 541.

Petitioner also contends that the vehicles 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 that incorporate headlamps with DOT markings; (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 passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

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 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; (c) replacement of the driver's side air bag and knee bolster in 1991 and 1992 models, and the driver's and passenger's side air bags and knee bolsters in 1993 through 1996 models, with U.S.-model components if the vehicle is not so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, 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.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR part 565.

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: August 3, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–21071 Filed 8–5–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–3577 (PDA–18(R))]

Application by Association of Waste Hazardous Materials Transporters for a Preemption Determination as to Broward County, Florida's Requirements on the Transportation of Certain Hazardous Materials to or From Points in the County

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Interested parties are invited to submit comments on an application by the Association of Waste Hazardous Materials Transporters (AWHMT) for an administrative determination whether Federal hazardous materials transportation law preempts requirements enforced by Broward County, Florida, concerning the transportation of certain hazardous materials to or from points in the County.

DATES: Comments received on or before September 21, 1998, and rebuttal comments received on or before November 4, 1998, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at ''http://dms.dot.gov.''

Please submit comments to the Dockets Office at the above address. Comments may also be submitted by E-mail to ''rspa.counsel@rspa.dot.gov.'' Each comment should refer to the Docket Number set forth above. A copy of each comment must also be sent to

(1) Mr. Michael Carney, Chairman, Association of Waste Hazardous Materials Transporters, 2200 Mill Road, Alexandria, VA 22314, and (2) Mr. John J. Copelan, Jr., County Attorney, 115 S. Andrews Avenue, Suite 423, Fort Lauderdale, FL 33301. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: ''I certify that copies of this comment have been sent to Messrs. Carney and Copelan at the addresses specified in the **Federal Register**.'')

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations, are available through the home page of RSPA's Office of the Chief Counsel, at ''http://rspa-atty.dot.gov.'' A paper copy of this list and index will be provided at no cost upon request to Ms. O'Berry, at the address and telephone number set forth in ''For Further Information Contact'' below.

FOR FURTHER INFORMATION CONTACT: Donna L. O'Berry, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

AWHMT has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts certain provisions of the Broward County Code of Ordinances 93–47 (''Code''). The Code is an extensive set of regulations that is designed to protect the Biscayne Aquifer from possible harm due to the infiltration of hazardous materials into the aquifer. The Code was amended in 1993 to address concern pertaining to generation, use, storage, handling, processing, manufacturing and disposal of hazardous materials in Broward County. The text of AWHMT's application and a list of attachments are set forth in Appendix A. A paper copy of the attachments to AWHMT's application will be provided at no cost upon request to Ms. O'Berry, at the address and telephone number set forth in ''For Further Information Contact'' above.

AWHMT's challenges the definition of ''Hazardous Materials'' and related terms used in the Code and nine specific requirements:

—Code § 27–355(a)(1) containing release reporting requirements,

—Code § 27–356(b)(4)d.1 and Code § 27–356(d)(4)a.1 containing shipping paper retention requirements,

—Code § 27–356(d)(4)a.2 containing standards for waste-hauling vehicles,

—Code § 27–356(d)(4)a.3 containing periodic vehicle inspection requirements,

—Code § 27–356(d)(4)a.4 containing requirements that waste-hauling vehicles be marked with an identification tag issued by the County,

—Code § 27–356(d)(4)a.6 containing training requirements for drivers and other appropriate personnel,

—Code § 27–356(d)(4)a.7 containing fee requirements for a license to transport discarded hazardous material within the County,

—Code § 27–356(d)(4)b.1 containing requirements to request a modification from the County prior to utilizing a vehicle for transporting a type of waste that is not specified on the current license, and

—Code § 27–356(d)(4)c.1 containing reporting requirements for monthly activity reports to be submitted to the County.

The following discussion is based upon the copy of Broward County's Code, Chapter 27 attached to AWHMT's application.

Definition of ''Hazardous Material'' and Related Terms

Code § 27–352 defines a hazardous material to include, among other things, any substance identified as hazardous in the most current version of the HMR, as well as other Federal regulations, and any other substance not previous specific that is known to be a hazard due to quantity, concentration, physical, chemical or infectious characteristics and which the Department of Natural Resources Protection (DNRP) determines to pose an actual threat or potential risk to water supply, the environment or health and safety. Secs 27–352 (4)and (5). AWHMT contends that the County's definition of hazardous material is broader than the definition of a hazardous material contained in the HMR. In addition, AWHMT contends that the definitions of combustible liquid and flammable liquid found in Code § 27–352 are not consistent with the Federal standards. AWHMT challenges the Ordinance's provisions concerning the designation, description and classification of hazardous materials as not ''substantially the same'' as DOT's designation and classification system found at 49 CFR 172.

Release Reporting

Code 27–355(a)(1) requires the responsible party of an unauthorized hazardous material release to immediately report the release by telephone to the DNRP and to file written notification of its verbal report with the DNRP within seven calendar days. The Code defines responsible party as, among other things, the owner or operator of a facility or any person who accepts or accepted any hazardous material for transport. The Code defines facility to include, among other things, any motor vehicle, vessel, rolling stock, or aircraft.

AWHMT states that the written requirements are not substantially the same as the requirements of 49 CFR 171.16, which require a carrier to report in writing to DOT each incident of an unintentional release of a hazardous materials or discharge of hazardous waste that occurs during the course of transportation. The written report must be filed with DOT within 30 days of the discovery of the release.

Concerning the oral notification requirement, AWHMT also challenges the specific requirement that the notification must go to the DNRP, rather than a local emergency operator. AWHMT contends that the time required to locate the proper local agency number would create an unreasonable delay in reporting. Thus, AWHMT requests that the County's requirement to notify a specific local agency, rather than the local emergency operator, be preempted under the obstacle test.

Shipping Paper Requirements

Code §§ 27–356(b)(4)d.1 and 27–356(d)(4)a.1 and § 27–356(b)(4)d.1 require owners and operators of hazardous material facilities to retain copies of hazardous waste manifests on-site for five years. AWHMT cites to EPA regulations that require generator and transporters to retain copies of the Uniform Manifest for three years. AWHMT further asserts that there is no Federal requirement for the location where such records must be maintained. AWHMT contends that because DOT recognizes the Uniform Manifest as a shipping paper, the County's requirements should be preempted under the ''substantively the same as'' test.

Standards for Packagings

Code § 27–356(d)(4)a.2 requires all waste hauling vehicles to be product-tight or to be designed to effectively contain any release of hazardous material during transportation. AWHMT

contends that terms such as ''product-tight'' and ''any release'' may exclude DOT-authorized cargo tanks, since those tanks are equipped with pressure relief valves. AWHMT also contends that, by specifically referring to vehicles, the County Ordinance suggests that vehicles not authorized as packagings, such as trailers, must meet packaging standards. AWHMT contends that the County Ordinance does not grant equivalency to the HMR's packaging standards contained in 49 CFR 173, 178 and 180, and, therefore, should be preempted as not ''substantively the same as'' the Federal requirement.

Periodic Vehicle Inspection Requirement

Code § 27–356(d)(4)a.3 gives the County the option to inspect licensed vehicles. The Ordinance provides that the DNRP can waive the inspection of such vehicles if the licensee submits evidence that the vehicle has passed an inspection conducted pursuant to applicable Federal or state regulations. AWHMT asserts that the County's periodic inspection regulation causes a delay in the transportation of hazardous materials and should be preempted under the obstacle test.

Vehicle Marking Requirements

Code § 27–356(d)(4)a.4 requires that vehicles used to transport discarded hazardous materials be marked with a County identification tag. AWHMT contends that this provision should be preempted under 49 U.S.C. 5125(b)(1)(E) because it is not substantively the same as the Federal requirements for marking a package or container qualified for transporting hazardous materials.

Training Requirements

Code § 27–356(d)(4)a.6 requires that a licensee provide ''all drivers and other appropriate personnel * * * classroom instruction and/or on the job training that ensures compliance with the provisions of the [Code].'' Training must include annual training in the implementation of the licensee's spill contingency plan and procedures. The Ordinance requires that records, containing the name of each employee trained and dates of training must be kept for three years following the employee's last day of work or until the carrier goes out of business. AWHMT contends that localities do not have the authority to impose training requirements on hazmat employees, and, therefore, Code § 27–356(d)(4)a.6 should be preempted under the obstacle test.

Fee Requirements

Code § 27–357(a) authorizes the DNRP to charge fees for licenses. Code § 27–356(d)(4)a.7 requires an annual fee for a discarded hazardous materials license. Currently the fee is $175 per vehicle. Section 5125(g)(1) of 49 U.S.C. permits a State, political subdivision of a State, or Indian tribe to impose a fee related to transporting hazardous material only if the fee is fair and used for purposes related to transporting hazardous material. AWHMT challenges the County's fees under the obstacle test.

License Modification Requirements

Code § 27–356(d)b.1 provides that ''vehicles may only be utilized for the type of wastes for which the licensee is authorized to haul. A license modification must be requested and approved by DNRP prior to utilizing a vehicle for hauling a waste which is not specified on the current license.'' AWHMT contends that this advance notice requirement has the potential to unreasonably delay hazardous materials transportation and cites to 49 CFR 177.800(d), which requires that shipments of hazardous materials must be transported without unnecessary delay. For these reasons, AWHMT requests that RSPA preempt the regulation under the obstacle test.

Reporting Requirements

Code 27–356(d)(4)c.1 requires carriers of discarded hazardous materials to submit monthly reports to the DNRP. The reports must ''at a minimum, identify the facility name and address for each source, type, and quantity of waste, the date the waste was collected, and the final destination of each waste that was hauled during the preceding month.'' The report must also include ''a summary of the total quantities of each type of waste that was hauled by the licensee.'' AWHMT challenges this provision under the obstacle test.

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to AWHMT's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under § 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if

> (1) Complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or
>
> (2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria which RSPA had applied in issuing inconsistency rulings before 1990, under the original preemption provisions in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93–633 § 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not ''substantively the same as'' a provision of Federal hazardous materials transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

> (A) The designation, description, and classification of hazardous material.
>
> (B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.
>
> (C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.
>
> (D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.
>
> (E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

Subsection (g)(1) of 49 U.S.C. 5125 provides that a State, political subdivision, or Indian tribe may

> impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose relating to transporting hazardous materials, including enforcement and planning, developing, and maintaining a capability for emergency response.

These preemption provisions in 49 U.S.C. carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974).

When it amended the HMTA in 1990, Congress specifically found that:

(3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) Because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L.101–615 § 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments which expanded the preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, the HMTA was revised, codified and enacted ''without substantive change,'' at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745.)

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to make determinations of preemption that concern highway routing to FHWA and those concerning all other hazardous materials transportation to RSPA. 49 CFR 1.48(u)(2), 1.53(b).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. *See* 49 C.F.R. 107.209(d). A short period of time is allowed for filing of petitions for reconsideration. 49 C.F.R. 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the Federal hazardous materials transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F2d at 1581 n.10. In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policy set forth in Executive Order No. 12612, entitled ''Federalism'' (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

III. Public Comment

Comments should be limited to whether Federal hazardous material transportation law preempts Broward County, Florida's requirements challenged by AWHMT. Comments should:

(A) Set forth in detail the manner in which these requirements are applied and enforced; including but not limited to:

(1) Whether the County's description and classification of hazardous materials substantially differs from the HMR and potential effects of any differences;

(2) The impact of the County's requirement in § 27–355(a)(1) to immediately notify the DNRP, rather than an emergency response number, of a release;

(3) Whether the County's requirements in § 27-356(d)(4)a.2 that packages be product-tight or contain any release on cargo tanks includes DOT-authorized cargo tanks and whether this requirement applies to vehicles that are not considered packages;

(4) The amount of fees collected and the purposes for which those fees are used;

(5) The potential delays that would be caused by the County's requirement in 27–356(d)b.1 that a licensee request a license modification prior to hauling a waste that is not specified on the current license; and

(B) Specifically address the preemption criteria described in Part II above.

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC, on July 31, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Appendix A—Before the United States Department of Transportation Office of Hazardous Materials Safety

Application of the Association of Waste Hazardous Materials Transporters To Initiate a Proceeding To Determine Whether Various Requirements Imposed by the County of Broward, Florida on Persons Involved in the Transportation of Certain Hazardous Materials to or From Points in the County Are Preempted by the Hazardous Materials Transportation Act

April 9, 1998.

Interest of the Petitioner

The Association of Waste Hazardous Materials Transporters (AWHMT) represents companies that transport, by truck and rail, waste hazardous materials, including industrial, radioactive and hazardous materials, throughout the United States, including points to and from the County of Broward, FL (County). Despite full compliance with the hazardous materials regulations (HMRs), members of the AWHMT are precluded from transporting certain hazardous materials to or from points in the County unless certain requirements of the Broward County Hazardous Materials Ordinance (Ordinance)[1] are met. The AWHMT asserts that the County requirements are in contravention to the Hazardous Materials Transportation Act (HMTA).

Background

When the County proposed its Ordinance in 1993, the hazardous materials transportation industry submitted written and oral comments.[2] The substance of the comments pointed out how the proposed requirements were inconsistent with federal requirements and urged the County to conform the proposed requirements to federal standards. However, with one notable exception that will be mentioned later, the County enacted the proposed rules without substantive change. The County indicated that it preferred to deal with any inconsistencies with federal standards on a case-by-case basis, stating, in a cover letter accompanying the final text of the Ordinance, that, ''if an industry member has a specific question regarding the applicability of the ordinance to a particular fact pattern

[1] Ordinance 93–47, enacted on November 23, 1993.

[2] Letter to Lisa Zima Bosch, Office of the Broward County Attorney, from Cynthia Hilton, Chemical Waste Transportation Institute (CWTI), November 4, 1993; letter to Kevin Burger, Broward County Department of Natural Resource Protection, from Cynthia Hilton, CWTI, November 18, 1993; and statement before the Broward County Commissioners, by Cynthia Hilton, CWTI, November 23, 1993.

or case, DNRP will address the concern as need arises.''[3]

Despite the County's ''flexible'' enforcement promise, it has not deterred the County from enforcing requirements, as the attached affidavits attest, which we believe to be inconsistent with the HMR and therefore subject to preemption under the HMTA. The Ordinance provides that the County may use ''[a]ny enforcement proceedings authorized by the Code of the Laws of Florida * * * to enforce the provisions of [the Ordinance].''[4] In addition, violations of the Ordinance may result in the suspension or revocation of a permit.[5]

The Ordinance authorizes the County's Department of Natural Resource Protection (DNRP) ''to the extent permitted by state and federal law * * * to license, evaluate, review, and administer all hazardous materials activities * * * performed in Broward County.''[6] The Ordinance defines ''hazardous material'' as:

any substance or mixture of substances which meets any one of the following criteria:

(1) Hazardous materials as defined in this Article;[7] or

(2) Any substance listed in [Code] Chapter 27, Article XIII, Appendix A; or

(3) Any petroleum product or any material or substance containing discarded petroleum products; or

(4) Any substance identified as hazardous in the most current version of the following regulations:

(a) Comprehensive Environmental Response Compensation, and Liability Act * * *,

(b) Emergency Planning and Community Right-to-Know Act,

(c) Hazardous Material Transportation Act * * *,

(d) Federal Insecticide, Fungicide, and Rodenticide Act * * *.

(5) Any substance, not specified above, which is known to be hazardous due to quantity, concentration, physical, chemical or infectious characteristics and which DNRP determines poses an actual threat or potential risk to water supplies, to the environment or to health and safety.[8]

Clearly, the Ordinance applies to and affects the transportation of hazardous materials regulated pursuant to the HMTA.

County Requirements for Which a Determination is Sought

This application seeks preemption of the following County requirements:

- Code § 27–352: Definition of ''Hazardous Material'' and related terms.
- Code § 27–355(a)(1) : Release reporting.
- Code § 27–356(b)(4)d.1. & § 27–356(d)(4)a.1.: Shipping paper requirements.
- Code § 27–356(d)(4)a.2.: Standards for packagings.
- Code § 27–356(d)(4)a.3.: Periodic vehicle inspection requirements.
- Code § 27–356(d)(4)a.4.: Vehicle marking requirements.
- Code § 27–356(d)(4)a.6.: Training requirements.
- Code § 27–356(d)(4)a.7.: Fee requirements.
- Code § 27–356(d)(4)b.1.: Prenotification requirements.
- Code § 27–356(d)(4)c.1.: Recordkeeping and reporting requirements.

Federal Law Provides for the Preemption of Non-Federal Requirements When Those Non-Federal Requirements Fail Certain Federal Preemption Tests

The Hazardous Materials Transportation Act (HMTA) was enacted in 1975 to give the U.S. Department of Transportation (DOT) greater authority ''to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.''[9] By vesting primary authority over the transportation of hazardous materials in the DOT, Congress intended to ''make possible for the first time a comprehensive approach to minimization of the risks associated with the movement of valuable but dangerous materials.''[10] As originally enacted, the HMTA included a preemption provision ''to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.''[11] The Act preempted ''any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the Act], or in a regulation issued under [the Act].''[12] This preemption provision was implemented through an administrative process where DOT would issue ''inconsistency rulings'' as to, [w]hether compliance with both the State or political subdivision requirement and the Act or the regulations issued under the Act is possible; and [t]he extent to which the State of political subdivision requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.''[13]

These criteria, commonly referred to as the ''dual compliance'' and ''obstacle'' tests, ''comport[ed] with the test for conflicts between Federal and State statutes enunciated by the Supreme Court in Hines v. Davidowitz, 312 U.S. 52 (1941).''[14]

In 1990, Congress codified the dual compliance and obstacle tests as the Act's general preemption provision.[15] The 1990 amendments also expanded on DOT's preemption authorities. First, Congress expressly preempted non-federal requirements in five covered subject areas if they are not ''substantively the same'' as the federal requirements. These covered subject areas are:

- The designation, description, and classification of hazardous materials.
- The packing, repacking, handling, labeling, marking and placarding of hazardous materials.
- The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.
- The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.
- The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.[16]

''Substantively the same'' was defined to mean ''conforms in every significant respect to the Federal requirement. Editorial and other similar de minimis, changes are permitted.''[17] Second, non-federal highway routing requirements that fail to satisfy the federal standard under 49 U.S.C. 5112(b) are preempted.[18] Third, non-federal registration and permitting forms and procedures that are not ''the same'' as federal regulations to be issued are preempted.[19] Forth, non-federal fees related to the transportation of hazardous materials are preempted unless the fees are ''fair and used for a purpose related to transporting hazardous materials.''[20] These preemption authorities are limited only to the extent that non-federal requirements are ''otherwise authorized'' by federal law. A non-federal requirement is not ''otherwise authorized by Federal law'' merely because it is not preempted by another federal statute.[21]

The hazardous materials regulations (HMRs) have been promulgated in accordance with the HMTA's direction that the Secretary of Transportation ''issue regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce.''[22] ''Transportation'' is defined as ''the movement of property and loading, unloading, or storage incidental to the movement.''[23]

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[3] Letter to Cynthia Hilton, CWTI, from Lisa Zima Bosch, Office of the County Attorney, May 26, 1994.

[4] Broward County Code of Ordinances Chapter 27, Article XII, (hereinafter ''Code''), § 27–357(d). Attached is evidence of the County's use of this authority. In a notice of violation, the County declares its authority to enforce civil penalties under Code § 27–38(f)(2)and criminal penalties under §§ 775.082 and 775.083, Florida Statutes.

[5] See attached ''General Conditions'' of a License, item 1.

[6] Code § 27–351. Copy attached.

[7] ''Hazardous materials'' is defined as ''any substance defined or identified as a hazardous material in 40 CFR parts 260–265 and appendices, promulgated pursuant to the Resource Conservation and Recovery Act * * *.''

[8] Code § 27–352: Definition of ''Hazardous Material.''

[9] P.L. 93–633 § 102.

[10] S. Rep. 1192, 93rd Cong., 2d Sess., 1974, page 2.

[11] S. Rep. 1192, 93rd Cong., 2d Sess, 1974, page 37.

[12] P.L. 93–633 § 112(a).

[13] 41 *FR* 38171 (September 9, 1976).

[14] 41 *FR* 38168 (September 9, 1976).

[15] 49 U.S.C. § 5125(a).

[16] 49 U.S.C. 5125(b).

[17] 49 CFR 107.202(d).

[18] 49 U.S.C. 5125(c).

[19] 49 U.S.C. 5119(c)(2).

[20] 49 U.S.C. § 5125(g).

[21] *Colo. Pub. Util. Comm'n v. Harmon*, 951 F. 2d, 1571, 1581 n.10, (10th Cir. 1991).

[22] 49 U.S.C. 5103(b).

[23] 49 U.S.C. 5102(12).

Our review of federal law and the Ordinance lead us to believe that the following specific Ordinance requirements are subject to preemption pursuant to 49 U.S.C. 5125(a)(2) and (b) absent further modification and/or clarification:

The Designation, Description, and Classification of Hazardous

Material in Transportation is Reversed to the Federal Government

The HMTA provides that non-federal rules designating, describing, and classifying hazardous materials for transportation is preempted unless the non-federal rules are substantively the same as the federal rules. As noted above, Code § 27–352 defines ''hazardous material'' more broadly than the HMRs. Likewise, Code § 27–352 contains definitions of ''combustible liquid'' and ''flammable liquid'' that are not consistent with federal standards.[24] The disparity between federal and County definitions, the redundancy within the County's definitions, and, in particular, the open-ended discretion given the DNRP at § 27–352—Hazardous materials—(5) to name and regulate additional substances of concern, illustrates the confusion that is faced by hazardous materials transporters in understanding their regulatory obligations.[25] Clearly, the Ordinance provisions relating to the ''designation, description, and classification of hazardous materials'' are not ''substantively the same'' as DOT's designation and classification system found at 49 CFR 172. We believe this classification scheme, as it affects hazardous materials in transportation, is preempted pursuant to 49 U.S.C. 5125(b)(1)(A).

The Written Notification, Recording, and Reporting of the Unintentional Release in Transportation of Hazardous Material is Reversed to the Federal Government and Locally Imposed Oral Reporting Requirements Inconsistent With Federal Requirements Pose an Obstacle to the Accomplishment and Carrying Out of the HMTA

Code § 27–355(a)(1) requires the ''responsible party'' of an unauthorized hazardous material release to ''immediately report'' unauthorized releases of hazardous materials by telephone to the DNRP. Among other things, a ''responsible party'' is defined as the ''owner or operator of a facility'' where a ''facility'' includes ''any . . . motor vehicle, vessel, rolling stock, or aircraft,'' and ''[a]ny person . . . who accepts or accepted any hazardous material for transport . . .''[26] The Code also requires that written notification of these verbal reports must be filed with the DNRP within seven calendar days. The written notification must ''include at a minimum the location of the release, a brief description of the incident that caused the release . . . a brief description of the action taken to stabilize the situation, and any laboratory analysis, if available.''[27]

In addressing this issue, RSPA will have to distinguish between the County's written and verbal notification requirements. First, it is clear that the County's written notification requirements are not substantively the same as corresponding federal requirements.[28] The HMTA expressly preempts such requirements.[29] DOT has even moved to preempt non-federal written incident reports when the non-federal requirement has been only ''to provide copies of the incident reports filed with [DOT] . . .''[30] On the other hand, RSPA has generally not found inconsistent requirements for immediate, oral incident reports.[31] While we do not dispute the necessity of and, in fact, support immediate notice following an incident, we ask RSPA to preempt the specific requirement that the notice must go to the DNRP. Broward County is but one of over 30,000 local governmental jurisdictions in the country. In recognition of this fact, the U.S. Environmental Protection Agency provided an exception from release-reporting requirements for ''an owner or operator of a facility [which includes motor vehicles, rolling stock, and aircraft] from which there is a transportation-related release if the owner/operator provides immediate notice to the ''911 operator, or in the absence of a 911 emergency telephone number, to the operator.''[32] A ''transportation-related release'' is defined as a ''release during transportation, or storage incident to transportation if the stored substance is moving under active shipping papers and has not reached the ultimate consignee.''[33] If all non-federal jurisdictions required immediate reporting to a specific local agency, telephone-like books of emergency phone numbers and reporting requirements would have to be carried in every vehicle. In fact, we believe that the effort to locate the correct number of each jurisdiction would unreasonably delay such notice. For these reasons, we request that RSPA find preempted the requirement to notify a specific local agency in lieu of a notice to the local emergency operator under its obstacle test preemption authority.[34]

The Preparation, Execution, and Use of Shipping Documents Related to Hazardous Material and Requirements Related to the Number, Contents, and Placement of Those Documents is Reserved to the Federal Government

Code § 27–356(b)(4)d.1. and § 27–356(d)(4)a.1., by reference to (b)(4)d.1., require that owner/operators of ''hazardous material facilities,'' including facilities offering hazardous waste for transport, and ''discarded hazardous material haulers'' to retain copies of ''hazardous waste manifests'' of shipments to, from, or through the County (if the through movement is via a ''transfer station'')[35] for five years at hazardous materials facilities these entities may operate in the County. EPA requires such generators and transporters to retain copies of the Uniform Manifest for a maximum of three years.[36] Additionally, no federal requirement limits the location where the transporter can retain those records. The Uniform Manifest is recognized by DOT as a shipping paper.[37] Non-federal requirements pertaining to shipping papers are subject to the HMTA's ''substantively the same as'' test of preemption.

The Design, Manufacturing, Fabrication and Maintenance of a Packaging or Container Which is Represented, Marked, Certified, or Sold as Qualified for Use in the Transportation of Hazardous Materials is Reserved to the Federal Government

As noted above, the HMTA preempts non-federal requirements concerning the design, manufacture, fabrication, and maintenance of a packaging offered as qualified for use in the transport of hazardous materials. Uniformity in the construction and maintenance of packagings, especially reusable packagings, is critical. The Ordinance, however, requires all ''waste hauling vehicles [to] be *product-tight* or be designed to effectively contain *any release* of hazardous materials during transport.''[38] (Emphasis added.) This definition may seem consistent with the HMRs general packaging standards.[39] However, terms like ''product-tight'' and ''any release''[40] call into question whether DOT-authorized cargo tanks would meet this standard because they are equipped with pressure relief valves. Additionally, the Ordinance keys its requirements to ''vehicles,'' suggesting that vehicles not authorized as packagings, such as trailers, must meet ''packaging'' standards. Nowhere, does the Ordinance grant equivalency to the packaging standards of the HMRs. Code § 27–356(d)(4)a.2. should be preempted pursuant to 49 U.S.C. 5125(b)(1)(E) because it is not ''substantively the same as'' the federal

[24] Also see County's definition of ''biomedical waste''.

[25] Even the County's attempt to clarify materials of concern by reference to federal law provokes confusion. The ordinance states that a ''hazardous material,'' in the County's terminology, includes ''any substance identified as hazardous'' according to a number of federal statutes. ''Hazardous substance'' is a term used in the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). The Emergency Planning and Community Right-to-Know Act (SARA Title III), lists ''acutely hazardous substances.'' ''Hazardous substance,'' in the context of the HMTA, references the hazardous substance list in CERCLA, making the reference to the HMTA superfluous. No materials are identified as ''hazardous substances'' in the Federal Insecticide, Fungicide, and Rodenticide Act.

[26] Code § 27–352, definitions of ''responsible party'' and ''facility.''

[27] Code § 27–355(a)(1).

[28] 49 CFR 171.16.

[29] 49 U.S.C. 5125(b)(1)(D).

[30] IR–31, 55 FR 25582 (June 21, 1990).

[31] IR–2, 44 *FR* 75566 (December 20, 1979); IR–3, 45 *FR* 76838 (November 20, 1980); IR–32, 55 *FR* 36736 (September 6, 1990).

[32] 40 CFR 355.40(b)(4)(ii).

[33] *Ibid.*

[34] 49 U.S.C. 5125(a)(2).

[35] Code 27–352, definition of ''transfer station'' includes ''any site ... whose primary purpose is to store ... discarded hazardous materials ... prior to or during transport ... .''

[36] 40 CFR 263.22(a).

[37] 49 CFR 172.205(h).

[38] Code § 27–356(d)(4)a.2.

[39] 49 CFR 173.24.

[40] Code § 27–352, definition of ''release'' where ''release'' means the ''unauthorized spilling, leaking, . . . emitting, . . . discharging, . . . of any hazardous materials . . . to the air, water, soil or other natural resources . . . .''

packaging standards found at 49 CFR 173, 178, and 180.

The Ordinance Requirements for Periodic Vehicle Inspections are Preempted by the HMTA

When initially proposed, code § 27–356(d)(4)a.3., would have required all vehicles used for the transport of ''discarded hazardous materials'' to, from or through the County (if the through movement is via a ''transfer station'') to be inspected prior to the issuance of a ''license identification tag'' that must be displayed on the rear of the vehicle prior to transport. The inspection would be valid for one year. After our industry provided the County with evidence that DOT has preempted such non-federal periodic inspections,[41] the final version of the code was amended to provide that the DNRP *could* waive the inspection if the licensee submitted ''evidence that the vehicle has satisfactorily completed an inspection conducted pursuant to applicable federal or state regulations.''[42]

DOT has preempted, under the ''obstacle'' test, non-federal periodic vehicle inspection requirements in the past because such inspections can not be accomplished without ''unnecessary delay'' within the meaning of 49 CFR 177.853(a) and consequently the requirement failed the obstacle test of the HMTA. The County cannot be allowed to protect its inspection requirement against such preemption by making the inspection waivable at the discretion of the DNRP.

In practice, none of the documents distributed to licensees suggests that the DNRP's inspection authority is discretionary, nor has the County on its own initiative communicated to licensees the potential to waive inspection requirements and the process by which such a waiver could be obtained.[43] Even if the County announced a procedure to request a waiver based on the standard provided at Code § 27–356(d)(4)a.3.,—that the vehicle had satisfactorily completed an inspection conducted pursuant to applicable federal or state regulations—the requirement is still defective because the Ordinance does not guarantee that the waiver will be granted. Indeed, such evidence has been presented and the DNRP has, nevertheless, required its own separate inspection, as the attached affidavits attest.

The delay of hazardous materials transportation caused by the inspection requirement is indisputable. To accomplish the County's inspection requirement, motor carriers must schedule, in advance, appointments to bring vehicles to the one inspection location in the County. Vehicles must be delivered for inspection empty. Vehicle and driver are detained for the inspection. Following the inspection, the vehicles are marked with an official permanently attached sticker as proof that the vehicle is qualified by the County to transport discarded hazardous materials. The vehicle and driver are then released.

If the County's vehicle inspection requirements are allowed to stand, every non-federal jurisdiction could impose such requirements. ''Discarded hazardous materials'' transportation via motor carrier would, as a result, virtually cease inasmuch as the vehicles would be routed, without cargo, from place to place to obtain inspections. We believe that the County's periodic inspection requirements, as distinguished from random, roadside inspections, are preempted pursuant to 49 U.S.C. 5125(a)(2).

Non-Federal Marking Requirements on Cargo Tanks and Truck Trailers Carrying Hazardous Materials Are Preempted

Code § 27–356(d)(4)a.4. requires the marking of vehicles used to transport discarded hazardous materials. The County Discarded Hazardous Material Transport identification tag is to be placed on the rear of the vehicle. (DNRP License Identification Tag example attached.) The tag indicates the expiration date of the period for which the vehicle is qualified to transport discarded hazardous materials in the County. A new tag can be applied for after the vehicle has successfully passed the County's vehicle inspection requirements.

The HMTA provides that non-federal marking of a package or container which is marked or otherwise certified pursuant to the HMRs as qualified for use in the transportation of hazardous materials is preempted unless the non-federal requirements are substantively the same as federal requirements. We believe this preemption standard—49 U.S.C. 5125(b)(1)(E) —is appropriate for review of County's vehicle identification tag requirements. In fact, similar vehicle marking requirements imposed by the State of California were preempted under this standard.[44]

The Ordinance Requirements for Training are Preempted by the HMTA

Code § 27–356(d)(4)a.6. requires the licensee to provide ''all drivers and other appropriate personnel . . . classroom instruction and/or on the job training that ensures compliance with the provisions of this [Code].'' At minimum, ''annual training in the implementation of the licensee's spill contingency plan and procedures is required. Additionally, records of the name of each employee and dates of training must be kept on file for three years following the employee's last day at work or until the carrier goes out of business.

DOT prescribes requirements for the training of ''hazmat employees.''[45] A ''hazmat employee'' is defined as a person ''who is employed by a hazmat employer and who in the course of employment directly affect hazardous materials transportation safety.'' DOT's standard requires hazmat employees to be trained every three years, unless job responsibilities change more frequently, and requires that training records be kept only for the preceding three-year training period and only 90 days following the employee's last day at work. States are allowed to impose more stringent training requirements on such employees only if those requirements do not otherwise conflict with DOT's training requirements and apply only to drivers domiciled in that state.[46] There is no authority for localities to impose training standards on such employees.

The County's training requirements, as they affect hazmat employees, should be preempted based on the obstacle test at 49 U.S.C. 5125(a)(2).

The Fees Imposed by the Ordinance are not ''Fair'' and Subject to Preemption Under the Obstacle Test

Code § 27–357(a) authorizes the DNRP ''to charge fees for licenses [based on] fees . . . adopted by the Board of County Commissioners and set forth in the Administrative Code.'' Code § 27–356(d)(4)a.7. provides that the discarded hazardous materials license will be payable annually. Currently, the license fee is $175 per vehicle.

The County's per-vehicle fee is flat and unapportioned. The U.S. Supreme Court has declared fees which are flat and unapportioned to be unconstitutional under the Commerce Clause because, among other things, such fees fail the ''internal consistency'' test.[47] The Court reasoned that a state fee levied on an interstate operation violates the Commerce Clause because, if replicated by other jurisdictions, such fees lead to interstate carriers being subject to multiple times the rate of taxation paid by purely local carriers even though each carrier's vehicles operate an identical number of miles.[48] In addition, because they are unapportioned, flat fees cannot be said to be ''fairly related'' to a feepayer's level of presence or activities in the fee-assessing jurisdiction.[49] In a number of subsequent cases, courts have relied on these arguments to strike down, enjoin, or escrow flat hazardous materials taxes and fees.[50] The County's per vehicle fee rate is comparable to that assessed by many states. The substantial financial burden of meeting multiple state fee requirements is magnified many times if local entities are permitted to impose fees on carriers in every jurisdiction in which they operate.

We submit that flat fees also run afoul of the HMTA because some motor carriers, otherwise in compliance with the HMRs, will inevitably be unable to shoulder multiple flat-per vehicle fees, and thus be excluded from some sub-set of fee-imposing jurisdictions. In fact, motor carriers, as the

[41] 58 *FR* 48933 (September 20, 1993), affirmed on reconsideration 60 *FR* 8800 (February 15, 1995).

[42] Code § 27–356(d)(4)a.3..

[43] See attachment (E), citing ''No Vehicle (sic) shall be utilized for hauling until it has been inspected by DNRP . . . .''

[44] 58 *FR* 48933 (September 20, 1993), affirmed on reconsideration 60 *FR* 8800 (February 15, 1995).

[45] 49 CFR 172, Subpart H.

[46] 49 CFR 172.701.

[47] *American Trucking Assn's* v. *Scheiner*, 483 U.S. 266 (1987).

[48] *Ibid.*, 284–86.

[49] *Ibid.*, 290–291 (citing *Commonwealth Edison Co.* v. *Montana*, 453 U.S. 609, 629 (1981)

[50] *American Trucking Assn's Inc.* v. *State of Wisconsin*, No. 95–1714, 1996 WL 593806 (Wisc. App. Ct., October 1996); *American Trucking Assn's Inc.* v. *Secretary of Administration*, 613 N.E.2d 95 (Mass. 1993); *American Trucking Assn's Inc.* v. *Secretary of State*, 595 A.2d 1014 (Me. 1991).

attached affidavits attest, have already restricted their hazardous materials operations in the County because of the unfairness of the fees. If the County's flat fee scheme is allowed to stand, similar fees must be allowed in the Nation's other 30,000 non-federal jurisdictions. The cumulative effect of such outcome would be not only a generally undesirable patchwork of regulations necessary to collect the various fees, but the balkanization of carrier areas of operation and attendant, unnecessary handling of hazardous materials as these materials are transferred from one company to another at jurisdictional borders. The increased transfers would pose a serious risk to safety, since ''the more frequently hazardous material is handled during transportation, the greater the risk of mishap.'' [51]

In recognition of these outcomes, Congress amended the HMTA, in 1990, to provide that a ''political subdivision . . . may impose a fee related to transporting hazardous material only if the fee is *fair* and used for a purpose related to transporting hazardous material.'' [52] (Emphasis added.) Augmenting this authority, Congress further provided, in the 1994 amendments to the HMTA, that DOT collect information about the basis on which the fee is levied.[53] The then-Chairman of the Senate Subcommittee to authorize the amendment explained that DOT was to use this authority to determine if ''hazardous materials fees are excessive . . . and therefore subject to preemption.'' [54] When determining what constitutes ''fair'', the Chairman clarified that ''the usual constitutional commerce clause protections remain applicable and prohibit fees that discriminate or unduly burden interstate commerce.'' [55] In closely analogous circumstances, the Supreme Court considered the meaning of 49 U.S.C. 1513(b), which authorizes States to impose ''reasonable'' charges on the users of airports. The Court read the statute to apply a ''reasonableness standard taken directly from . . . dormant Commerce Clause jurisprudence.'' [56] In the absence of any evidence the Congress meant to sanction non-federal fees that are discriminatory or malapportioned, a ''fair'' fee within the meaning of 49 U.S.C. 5125(g)(1) surely is one that, at a minimum, complies with the requirements of the Commerce Clause.

Additionally, it must be remembered that the Ordinance imposes its challenged flat fees only on motor carriers of ''discarded hazardous materials'' engaged in transportation operations to or from the County. However, AWHMT has reviewed the hazardous materials incident reports filed with DOT pursuant to 49 CFR 171.16 and discovered, for the five-year representative period 1992–1996, that *no* hazardous waste releases occurred.[57] On the other hand, 160 non-waste hazardous materials incidents were reported. Twenty-one percent of these incidents resulted from shipments traveling through the County. Twelve of the incidents were in the air mode, two were in the rail mode. The County has unfairly burdened select motor carriers of hazardous waste with fees and requirements that are unsupported by the risk presented to the citizens and/or environment of the County.

For the above listed reasons, we assert that flat fees are inherently ''unfair'' and that the County's fee scheme should fall to the obstacle test pursuant to 49 U.S.C. 5125(a)(2).

Regrettably, we have been unable to obtain information about what use the County makes of the revenue from the discarded hazardous material transporter fee. We request the County to provide an accounting of its fee usage pursuant to this proceeding and, based on the County's response, reserve the right to challenge the County's discarded hazardous materials transporter fee under the ''used for'' test as well.

Prenotification Requirements are Preempted by the HMTA

Code § 27–356(d)(4)b.1. provides that ''vehicles may only be utilized for the type of wastes for which the licensee is authorized to haul. A license modification must be requested and approved by DNRP prior to utilizing a vehicle for hauling a waste which is not specified on the license.''

While no such requirement exists in the HMRs, advance notice requirements of hazardous material transportation have been preempted.[58] These requirements have the potential to unreasonably delay hazardous materials transportation.[59] ''Congress expressly found that [non-federal] 'notification' requirements that 'vary from Federal laws and regulations' create 'unreasonable hazards' and pose a 'serious threat to public health and safety.' . . . [Such requirement] obstructs the purpose and objective of Congress and the Secretary.'' [60] For these reasons, we request RSPA to find preempted the requirement to notify the County about changes in the type of waste to be carried on a specific vehicle.

Non-Federal Recordkeeping and Reporting Requirements are Subject to Review Under the Obstacle Test

Code § 27–356(d)(4)c.1. requires carriers of discarded hazardous materials to submit monthly reports to the DNRP. The report must ''at a minimum, identify the facility name and address for each source, type, and quantity of waste, the date the waste was collected, and the final destination of each waste that was hauled during the preceding month.'' The report must also include ''a summary of the total quantities of each type of waste that was hauled by the licensee.''

With the exception of the monthly totals, this information is all available from the Uniform Manifest. Federal law requires Manifests to be retained by the carrier for three years, and, as notes above, the County requires a five year retention period. The DNRP has authority, pursuant to the Ordinance, to inspect these documents upon request.[61]

In the past, DOT has preempted requirements for information or documentation in excess of federal requirements because such requirements are an obstacle to the HMTA. There is no de minimus exception to the ''obstacle'' test because thousands of jurisdictions could impose de minimis information requirements.[62]

Conclusion

The Ordinance imposes requirements on the transportation of certain hazardous materials which we believe are preempted by federal law. As the attached affidavits disclose, the County is indeed enforcing the above suspect requirements despite its offer to address individual carrier concerns about conflicts with federal hazmat law as the need arises. When we discovered that the County was indiscriminately enforcing its requirements, we recontacted the County in October 1997 giving notice of our concerns and our intention of file this application if the County was not prepared to repeal these requirements on its own initiative. Despite our good-faith effort to deal directly with the County on these matters, we have not yet received a reply. We can no longer tolerate the uncertainty created by the determination of the County to enforce its suspect regulatory requirements. Consequently, we request timely consideration of the concerns we have raised.

Certification

Pursuant to 49 CFR 107.205(a), we hereby certify that a copy of this application has been forwarded with an invitation to submit comments to: John J. Copelan, Jr., County Attorney, Office of the County Attorney, 115 S. Andrews Avenue, Suite 423, Fort Lauderdale, FL 33301.

Respectfully submitted,

Michael Carney,

Chairman.

Enclosures

cc: Ed Bonekemper, Asst. Chief Counsel for Hazardous Materials Safety, RSPA—DCC–10, U.S. Department of Transportation, 400 Seventh St., SW, Washington, DC 20590

Attachments

(A) County Ordinance 93–47

(B) Discarded Hazardous Materials (DHM) License Application

(C) Affidavits of:

Jessica M. Wise, A.R. Paquette & Company

[51] *Missouri Pac. R.R. Co.* v. *Railroad Comm'n of Texas*, 671 F. Supp. 466, 480–81 (W.D. Tex. 1987).

[52] 49 U.S.C. 5125(g)(1).

[53] 49 U.S.C. 5125(g)(2).

[54] *Cong. Record*, August 11, 1994, page 11324.

[55] *Ibid.*

[56] *Northwest Airlines* v. *County of Kent*, 510 U.S. 355, 374, 127 L.Ed. 2d 183, 114 S.Ct. 855 (1994).

[57] Hazardous Materials Information System, U.S. Department of Transportation—1992–1996, January 28, 1998.

[58] IR–6, 48 *FR* 760 (January 6, 1983); IR–32, 55 *FR* 36736 (September 6, 1990).

[59] 49 CFR 177.800(d).

[60] *Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991).

[61] Code § 27–356(b)(4)d.1.

[62] IR–8(A), 52 *FR* 13000 (April 20, 1987).

Connie Buschur, Metropolitan Environmental/Omni Transport Company
Diana L. Hughes, Environmental Transportation Services
Karla Simmons, Tri-State Motor Transit Company
(D) Sample notice of County's Enforcement Authority
(E) Sample ''General Conditions'' of a DHM License
(F) Sample DHM License with Instruction to Schedule Vehicle For Inspection
(G) Sample Vehicle Marking
(H) Map to Vehicle Inspection Site
(I) Letter to Cynthia Hilton, CWTI, from Lisa Bosch, Broward County, FL, May 26, 1994

[FR Doc. 98–21066 Filed 8–5–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Cuban Remittance Affidavit

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the Office of Foreign Assets Control's Cuban Remittance Affidavit information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before October 5, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Dennis P. Wood, Chief, Compliance Programs Division, or William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Annex—2d Floor, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Dennis P. Wood, Chief, Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Title: Cuban Remittance Affidavit.

OMB Number: 1505–0167.

Abstract: The information is required of persons subject to the jurisdiction of the United States who make remittances to close relatives in Cuba pursuant to §§ 515.563 and 515.564 of the Cuban Assets Controls, 31 CFR part 515. The information will be used by the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') to monitor compliance with regulations governing family and emigration remittances.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000,000 filers per quarter, each filing four times a year.

Estimated Time Per Respondent: 45 to 75 seconds per form, with four forms filed annually per person.

Estimated Total Annual Burden Hours: 66,667, assuming each filer files four times per year.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to this collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 31, 1998.

William B. Hoffman,

Chief Counsel, Office of Foreign Assets Control.

[FR Doc. 98–20942 Filed 8–3–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Reports on Oil Transactions by Foreign Affiliates

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the Office of Foreign Assets Control's information collection on oil-related transactions by foreign affiliates of United States persons (*see* 31 CFR 560.603), as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before October 5, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Loren L. Dohm, Chief, Blocked Assets Division, or William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Annex—2d Floor, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Loren L. Dohm, Chief, Blocked Assets Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Title: Reports on Oil Transactions Engaged in By Foreign Affiliates.

OMB Number: 1505–0106.

Abstract: The information must be filed by United States persons with the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') with respect to each foreign affiliate owned or controlled by that United States person which engaged in reportable transactions during a calendar quarter with respect to certain purchases, sales or swaps of Iranian-origin crude oil, natural gas, or petrochemicals, or sales of services or goods to the Government of Iran or an entity in Iran for certain uses in the petroleum industry. See § 560.603 of the Iranian Transactions Regulations, 31 CFR part 560.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses.

Estimated Number of Respondents: 20, with a total of 30 reports filed per year (not all respondents have reportable transactions for each calendar quarter).

Estimated Time Per Respondent: 6.7 hours per report.

Estimated Total Annual Burden Hours: 201.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to this collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 31, 1998.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

[FR Doc. 98–20943 Filed 8–3–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Travel Service Provider and Carrier Service Provider Submission

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the Office of Foreign Assets Control's Travel Service Provider and Carrier Service Provider information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before October 5, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Dennis P. Wood, Chief, Compliance Programs Division, or William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Annex—2d Floor, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Dennis P. Wood, Chief, Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Title: Travel Service Provider and Carrier Service Provider Submission.

OMB Number: 1505–0168.

Abstract: The information is required of persons who have been authorized by the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') to handle travel arrangements to, from, and or within Cuba or to provide charter air service to Cuba. To ensure that there is compliance with regulations applicable to Cuban travel, OFAC has instituted a three-step process to collect information to meet sanctions enforcement needs. Individuals traveling to Cuba are required to submit the information to travel service providers, who forward it to carrier service providers for ultimate submission to OFAC.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and businesses.

Estimated Number of Respondents: 109,200.

Estimated Time Per Respondent: Five to 10 minutes per individual traveler per trip to Cuba; 5 minutes per entry for travel service providers, or up to 54,600 entries annually for travel service providers in the aggregate (4,550 hours); and up to 5 minutes per entry for carrier service providers, or up to 54,600 entries annually for carrier service providers in the aggregate (4,550 hours).

Estimated Total Annual Burden Hours: 9,100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to this collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents (this present collection involves the use of automated collection techniques and other forms of information technology); and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 31, 1998.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

[FR Doc. 98–20944 Filed 8–3–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Registration of Libyan Travel

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on the Office of Foreign Assets Control's Libyan travel information collection (*see* 31 CFR 550.560), as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before October 5, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Steven I. Pinter, Chief, Licensing Division, or William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Annex—2d Floor, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Steven I. Pinter, Chief, Licensing Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Title: Travel to Libya by Immediate Family Members of Libyan Nationals.

OMB Number: 1505–0092.

Abstract: The information must be filed by United States persons with the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') or with the Belgian Embassy in Tripoli, Libya, with respect to their eligibility to travel to and reside in Libya pursuant to the provisions of § 550.560 of the Libyan Sanctions Regulations, 31 CFR part 550.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: l hour.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to this collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments wil become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 31, 1998.

William B. Hoffman,

Chief Counsel, Office of Foreign Assets Control.

[FR Doc. 98–20945 Filed 8–3–98; 8:45 am]

BILLING CODE 4810–25–P

federal register

Thursday
August 6, 1998

Part II

Environmental Protection Agency

40 CFR Parts 148, 261, 266, etc.

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; et al.; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 266, 268, 271, and 302

[SWH–FRL–6122–7]

RIN 2050–AD88

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastes; And CERCLA Hazardous Substance Designation and Reportable Quantities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) to reduce hazards to human health and the environment from wastes generated from petroleum refining. EPA is listing as hazardous four wastes generated during petroleum refining and is issuing a decision not to list ten other petroleum refining wastes.

This action is taken under the authority of RCRA 3001(b)(1), which authorizes EPA to list wastes as hazardous, and 3001(e)(2), which directs EPA to make a decision whether to list as hazardous the various petroleum refining wastes. The effect of listing these four wastes will be to subject them to stringent management and treatment standards under RCRA and to emergency notification requirements for releases of hazardous substances to the environment. These notifications are required under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) and the Emergency Planning and Community Right to Know Act (EPCRA). EPA is also issuing Reportable Quantity (RQ) adjustments for these notifications.

This action also makes certain changes to the RCRA regulations to promote the environmentally sound recycling of oil-bearing residuals. Specifically, the Agency is excluding certain recycled secondary materials from the definition of solid waste. These materials include oil-bearing residuals from petroleum refineries when they are inserted into the petroleum refining process, oil from associated petrochemical facilities inserted into the petroleum refining process, and spent caustic from liquid treating operations when used as a feedstock to make certain chemical products. This rule also clarifies an existing exclusion for recovered oil from certain petroleum industry sources.

Finally, EPA is applying universal treatment standards (UTS) under the Land Disposal Restrictions program to the petroleum refining wastes listed in this rulemaking. The listed wastes must be treated to meet these treatment standards for specific constituents prior to land disposal.

EFFECTIVE DATES: This final rule is effective February 8, 1999, except for the amendments to §§ 261.3(c)(2)(ii)(B), 261.4(a), 261.6(a)(3)(iv)(C) and 261.100(b)(3) and the removal of § 261.6(a)(3)(v) which are effective August 6, 1998.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–98–PRLF–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the beginning of the Supplementary Information section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, toll-free, at (800) 424–9346 or at (703) 920–9810. The TDD Hotline number is (800) 553–7672 (toll-free) or (703) 486–3323 in the Washington, DC., metropolitan area.

For technical information on the RCRA hazardous waste listings, contact Maximo (Max) Diaz, Jr., or Robert Kayser, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 1235 Jefferson Davis Highway, Arlington, VA, (703) 308-0439. [E-mail addresses and telephone numbers: diaz.max@epamail.epa.gov, (703) 308–0439; kayser.robert@epamail.epa.gov, (703) 308–7304.] For information related to the exclusions from the definition of solid waste, contact Ross Elliott at the same address. [elliott.ross@epamail.epa.gov; (703) 308–8748.]

For technical information on the CERCLA aspects of this rule, contact: Ms. Elizabeth Zeller, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C., 20460, (703) 603–8744.

SUPPLEMENTARY INFORMATION: The index and the supporting materials are available on the Internet. Follow these instructions to access the information electronically:

www:http://www.epa.gov/epaoswer/osw/hazwaste.htm#id
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

The contents of the preamble to this final rule are listed in the following outline:

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I. Affected Entities

Entities potentially affected by this action are those which handle either the waste streams being added to EPA's list of hazardous wastes under RCRA and to the CERCLA list, or entities which need to respond to releases. Affected entities include:

Category	Affected entities
Industry	Generators of the following listed wastes, or entities that treat, store, transport, or dispose of these wastes. K169—Crude oil storage tank sediment from petroleum refining operations. K170—Clarified slurry oil storage tank sediment and/or in-line filter/separation solids from petroleum refining operations. K171—Spent hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic units (this listing does not include inert support media). K172—Spent hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic units (this listing does not include inert support media).
State, Local, Tribal Govt	State and local emergency planning entities.
Federal Govt	National Response Center, and any Federal Agency that handles the listed waste or chemical.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists those entities of which EPA now is aware that potentially could be affected by this action. Other entities not listed in the table also could be affected. To determine whether your facility is regulated by this action, you should examine 40 CFR Parts 260 and 261 carefully in concert with the amended rules found at the end of this **Federal Register** notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Legal Authority and Background

These regulations are being promulgated under the authority of sections 2002(a) and 3001(a), (b) and (e)(2), 3004 (g) and (m) of the Solid Waste Disposal Act (commonly referred to as RCRA), as amended, 42 U.S.C. 6912(a), and 6921(b) and (e)(2), and section 102(a) of CERCLA, 42 U.S.C. 9602(a).

A. Listing Decisions

Section 3001(a) of RCRA requires EPA to promulgate criteria for identifying characteristics of hazardous wastes and for listing hazardous wastes. Section 3001(b) authorizes EPA to promulgate regulations, based on these criteria, identifying and listing hazardous wastes. Section 3001(e)(2) of RCRA requires EPA to determine whether to list, as hazardous, wastes generated by specific industries and production processes, including petroleum refining wastes. Hazardous waste, for purposes of this rule, is defined at section 1004(5)(B) of RCRA as solid waste which may pose a substantial present or potential hazard to human health or the environment when improperly managed.

Hazardous wastes are subject to management and treatment requirements of RCRA Subtitle C, which establishes stringent federal requirements, including the need to obtain facility operating permits for persons who generate, transport, treat, store, or dispose of such waste. Solid wastes which are not hazardous may be disposed of at facilities which are overseen by state and local governments. These are the so-called RCRA subtitle D facilities, which generally impose less stringent requirements on management of wastes.

EPA's regulations at 40 CFR 261.20 provide that hazardous wastes may be classified as ''characteristic'' wastes if they have the properties described at 40 CFR 261.21 through 261.24, which would cause them to be classified as having the characteristics of ignitability, corrosivity, reactivity, or toxicity. Characteristic wastes are identified by sampling a waste, or using appropriate company records concerning the nature of the waste, to determine whether a waste has the relevant properties. There is no regulatory requirement to conduct sampling, but persons managing materials that are found to be characteristic hazardous wastes are subject to enforcement actions under RCRA.

Criteria for listing hazardous wastes are found at 40 CFR 261.11(a)(3), which provides that wastes may be listed as hazardous if they contain hazardous constituents identified in appendix VIII of 40 CFR part 261 and the Agency concludes, after considering eleven factors enumerated in § 261.11(a)(3), that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed. A substance is listed in appendix VIII if it has been shown in scientific studies to have toxic effects on life forms.

EPA's regulations at 40 CFR 261.31 through 261.33 contain the various hazardous wastes the Agency has listed from time to time. Section 261.31 lists wastes generated from non-specific sources, known as ''F-wastes,'' and § 261.32 lists hazardous wastes generated from specific sources, known as ''K-wastes.'' Pursuant to the requirement of RCRA section 3001(e)(2) to list refinery wastes, EPA has previously listed various petroleum refinery wastes designated as F037, F038, and K048 through K052. Section 261.33 lists as hazardous discarded commercial chemical products and other materials that become hazardous wastes, known as ''P-wastes'' or ''U-wastes,'' when they are discarded or intended to be discarded.

Therefore, newly listed wastes in this rule will be added to the K-waste list. Once listed, wastes must be managed as RCRA Subtitle C hazardous wastes. No testing of waste samples is required as for characteristic hazardous wastes.

On June 12, 1997, EPA entered into a proposed amended consent decree in a lawsuit filed by the Environmental Defense Fund (EDF)—*EDF* v. *Browner*, Civ. No. 89–0598 (D.D.C.). The consent decree sets out a series of deadlines for promulgating RCRA rules. Paragraph 1.k. of the proposed amended consent decree obligated EPA to promulgate a final listing determination on or before May 29, 1998 (EPA and EDF have since agreed to extend this date to June 29, 1998), for 14 additional petroleum refining process residuals. Today, EPA is issuing final listing determinations for these residuals (hereafter, ''listing residuals'') in accordance with the proposed consent decree's deadline. The consent decree also identified another 15 petroleum refining residuals for which EPA agreed to conduct a study (hereafter, ''study residuals''). EPA published the study in 1996. (See *Study of Selected Petroleum Refining Residuals-Industry Study*, August 1996; EPA530–R–96–018.)

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of a RCRA hazardous waste, described in 40 CFR 261.20 through 261.24, are also hazardous substances under CERCLA, as provided in CERCLA section 101(14)(C). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). Today's rule also establishes RQs for the newly listed wastes.

Today's listing determination follows the elements of EPA's hazardous waste listing policy presented in the dyes and pigments listing determination proposal (59 FR 66072, December 22, 1994). A description of how elements of EPA's listing policy were applied in today's listing determination is found in Section III.F.2., ''Risk Analysis,'' of the preamble for the proposed rule. Section V.C of this preamble discusses EPA's responses to comments and final decisions as they relate to the various elements of the listing policy and their applicability to this rule.

B. Definition of Solid Waste and Exclusions

The jurisdictional boundaries of RCRA are established primarily by the definition of solid waste. When hazardous sludges, by-products, and spent materials (often referred to as a group as ''secondary materials'') are recycled, a question exists as to whether such materials are ''solid wastes'' and so potentially within EPA's subtitle C jurisdiction. The regulatory definition of solid waste, found at 40 CFR 261.2, answers these questions, since only materials which meet this definition are even potentially subject to the subtitle C regulatory program set out at 40 CFR Parts 262–268. Secondary materials may be excluded from the definition of solid waste, and therefore from regulation under this regulatory program, if they are recycled in certain ways. The current definition of solid waste at 40 CFR 261.2 excludes secondary materials from the definition of solid waste that are used directly (i.e., without reclamation) as ingredients in manufacturing processes to make new products, used directly as effective substitutes for commercial products, or returned directly to the original process from which they are generated as a substitute for raw material feedstock. (See 40 CFR 261.2(e)(1)). As discussed in the January 4, 1985, rulemaking that promulgated this regulatory framework, these are activities which, as a general matter, resemble ongoing manufacturing operations more than conventional waste management and so are more appropriately classified as not involving solid wastes. (See 50 FR at 637–640).

However, these exclusions do not apply to materials that are either contained in, or used to produce, fuels and, therefore, do not generally apply to secondary materials recycled as part of the petroleum refining process (see 40 CFR 261.2(e)(2)(ii)). Petroleum industry representatives have long argued that oil-bearing secondary materials used as ingredients in a petroleum refining process to make fuel should be excluded from the definition of solid waste under RCRA.[1]

While these exclusions from the definition of solid waste are not available to hazardous secondary materials generated by, and used as ingredients in, the petroleum refining industry, these hazardous secondary materials, or the fuels produced from them, may be exempt from all regulatory requirements under 40 CFR 261.6(a)(3)(iii)–(v). These exemptions from regulatory requirements, however, did not resolve the jurisdictional debate involving the continued processing of hazardous secondary materials into fuels.

Regarding this debate ,the plain reading of the statute has been supplemented by case law providing parameters within which to determine whether secondary materials being recycled are or are not solid wastes. In its decision in *American Mining Congress* v. *EPA*, (824 F. 2d 1177 (D.C. Cir. 1987) (AMC I)), the D.C. Circuit Court held that EPA's rules defining the statutory term ''solid waste'' (RCRA Section 1004(27)) exceeded the Agency's statutory authority to the extent that the rules asserted jurisdiction over ''materials that are recycled and reused in an ongoing manufacturing or industrial process''

[1] See the proposed rule (specifically 60 FR 57752 to 57753) for a detailed discussion on the background to these regulatory issues.

(Id. at 1186 (emphasis original)). The Court held that ''[b]ecause these materials have not yet become part of the waste disposal problem'' (Id.), they are not yet ''discarded'' within the meaning of Section 1004(27) and so cannot be considered to be ''solid wastes.''

On January 8, 1988, EPA responded to the AMC I decision by proposing to exclude, from the regulatory definition of solid waste, oil-bearing petroleum residuals that are returned for further refining ''as part of one continuous and ongoing process.'' (see 53 FR FR 525, Jan. 8, 1988). More specifically, EPA proposed to exclude oil-bearing residues from the refining process when those residues are generated on-site and reinserted on-site into the petroleum refining process (including the coker), provided that the residues were not speculatively accumulated or stored in a manner involving land placement.

Subsequent decisions have established that the decision in AMC I is relatively narrow. In particular, courts have rejected the argument that ''potential reuse of a material prevents the Agency from classifying it as 'discarded' '' (see, American Mining Congress v. EPA, 907 F. 2d 1179, 1186 (D.C. Cir. 1990) (AMC II)). The proper test as to when, as a matter of law, the Agency is foreclosed from classifying a material as a solid waste is when a material is ''destined for immediate reuse in another phase of the industry's ongoing production process'' and that has ''not yet become part of the waste disposal problem'' (Id. at 1186 (emphasis original)). EPA retains considerable discretion in ascertaining how to apply this standard.

For example, secondary materials generated by one industry and sent to another industry for reclamation could be classified as solid wastes (although EPA retains some discretion as to whether to make that determination) (see, American Petroleum Inst. v. EPA, 906 F. 2d 726, 740–41 (D.C. Cir. 1990); *Ilco* v. *EPA*, 996 F. 2d 1126 (11th Cir. (1993); *Owen Electric Steel* v. *Browner*, 37 F. 3d 146 (4th Cir. 1994)). Similarly, secondary materials generated onsite, stored in surface impoundments, and reclaimed within the process which generated them could also be classified as solid wastes (see AMC II). EPA must normally justify determinations that a secondary material being recycled is not a solid waste by showing how the determination is consistent with RCRA's objective to ''establish a cradle-to-grave regulatory structure for the safe handling of hazardous wastes'' (see API, 906 F. 2d at 741).

On July 28, 1994, EPA finalized parts of the January 8, 1988, proposal pertaining to petroleum refining industry operations. As noted in that final rule, post-AMC I decisions make clear that the statute affords EPA great latitude to set the jurisdictional parameters of RCRA. As a consequence, the July 28, 1994, final rule excluded a more limited set of materials and imposed greater restrictions on where the materials can be inserted within the petroleum refining process, than what was proposed on January 8, 1988. Specifically, in its January 1988 proposal, EPA did not distinguish between recovered oil (i.e., oil reclaimed from secondary materials, such as wastewater, generated from normal petroleum refining, exploration and production, and transportation practices) and oil-bearing hazardous sludges, nor did it distinguish between the petroleum coker and other petroleum process units in defining the scope of the proposed petroleum refining exclusion. In the July 28, 1994, final rule, EPA limited the exclusion to recovered oil that is inserted into the petroleum refining process prior to distillation and catalytic cracking. Thus, it did not apply to recovered oil reinserted into the petroleum coker (see 40 CFR 261.4(a)(12) and 59 FR at 38541–38542, July 28, 1994). In at least one respect, the July 28, 1994, final rule was somewhat broader than what was proposed. The final exclusion applied to materials generated from petroleum industry sources other than refineries, while the January 8, 1988, rule proposed to exclude only oil-bearing materials generated at a refinery and reinserted into that refinery's refining process.

After promulgation of the July 28, 1994, final rule excluding certain recovered oil, the EPA published a direct final rule on March 26, 1996, to correct an inadvertent error in the regulatory text of the exclusion (see 61 FR 13103). Specifically, the direct final rule amended the words describing the point of insertion for recovered oil into the petroleum refining process (i.e., ''prior to crude distillation or catalytic cracking'') that was a condition of the exclusion. The original intent was to exclude recovered oil inserted into the refining process where the process removes at least some contaminants (which does not include cokers). After promulgating the exclusion, the Agency learned that delineating where recovered oil could or could not be inserted (and be excluded) using the words ''prior to crude distillation or catalytic cracking'' was unintentionally restrictive, i.e., those operations were common examples but there were other refinery units where contaminants were removed as well. In addition to the amended regulatory text, the Agency also clarified that the recovered oil exclusion applied to oil recovered from shared wastewater treatment systems at petroleum refineries co-located with petrochemical facilities (see 61 FR 13104). Because the Agency received no adverse comment as of April 9, 1996, on the amended regulatory text, the direct final rule became effective on May 28, 1996.

Today's final rule, which deals specifically with petroleum residuals, gives EPA the opportunity to address some larger, longstanding issues involving where the boundaries of RCRA should be drawn regarding jurisdiction over oil-bearing hazardous secondary materials which are generated by, and recycled within, the petroleum industry. Therefore, in addition to addressing specific regulatory issues that may arise as a result of a decision to list an individual petroleum waste stream, the Agency is issuing more comprehensive revisions to the RCRA regulations relating to regulatory jurisdiction over these materials when this type of intra-industry recycling occurs.

III. Summary of Proposal and Notice of Data Availability

A. Proposed Exclusions

The proposed rule discussed the applicability of the definition of solid waste to the waste streams being evaluated for listing, but also related to a broader class of petroleum wastes. This is discussed briefly below.

1. Exclusion of Oil-Bearing Hazardous Secondary Materials Inserted Into Petroleum Refining, Including Petroleum Coking

In the November 20, 1995, proposal, the Agency proposed to exclude oil-bearing secondary materials generated within the petroleum industry that are inserted into the petroleum coker (see 60 FR at 57754–57755). Generally, these secondary materials are generated as either residues of various refining processes or wastewater treatment systems which collect process waters (and oil) from the entire facility. (Note that these secondary materials, primarily wastewater treatment sludges, do not meet the definition of ''recovered oil'' because the contained oil is a small percentage of the total.) Secondary materials, such as wastewater treatment sludges, that contain a high percentage of oil are often processed to recover the oil for further refining (e.g., when there

is free oil). However, the typical oil recovery process (e.g., centrifugation) cannot recover all of the oil from these secondary materials, leaving a not insignificant amount of oil in the secondary materials that can only be recovered thermally.

In conventional petroleum coking operations (also known as ''delayed coking''), heavy oil-bearing feedstocks, typically bottoms from crude oil distillation or vacuum distillation (also referred to as ''resids,'' representing the heaviest oil fraction of the crude oil feedstock) are placed into a coke drum. This material is then heated to high temperatures, thermally breaking or ''cracking'' the long-chain hydrocarbon molecules found in heavy oil feedstock into short-and middle-chain oil fractions that are then recovered, condensed, and sent for further refining into high-value fuel products. The remains of the heavy oil-bearing feedstock (which is primarily carbon and some inorganic contaminants) forms the coke product, typically used as a fuel.

The last step of the conventional coking operation involves the injection of water to quench the coke product. Water is injected in the base of the coke drum and works its way up through the coke product, cooling the coke as it goes. This quenching also serves to remove light ends entrained within the coke product, similar to steam stripping. (The light ends recovered during the quenching process are likewise condensed and further refined into high-value fuel products.) Once cool enough, the coke product is typically removed from the coke drum using high pressure water drilling. For the purposes of this preamble discussion, it is important to distinguish between the two aspects of the coking operation. The first aspect, referred to in this preamble as ''conventional coking,'' involves the recovery of light-end hydrocarbons from the resids feedstock and produces the coke product. The second aspect, referred to here as the ''quenching process,'' involves the injection of water into the high-temperature coke to cool it down after the conventional coking process.

In the preamble discussion in the November 20, 1995, proposal, the Agency presented its determination that the petroleum coker is an integral part of the petroleum refinery process, with recovered middle-and light-end hydrocarbons as its primary product and petroleum coke as a co-product. Based on the information on hand comparing the composition of oil-bearing hazardous secondary materials to typical feedstocks to the coker, and the fact that the coke produced using oil-bearing hazardous secondary materials demonstrated no significant increase in hazardous metals concentrations, the Agency proposed to exclude such oil-bearing secondary materials when used in the production of petroleum coke. EPA believed this exclusion was further justified because the hazardous secondary materials are managed in a manner to prevent release, commensurate with management of nonhazardous oil-bearing feedstocks. (See 60 FR 57754–57755). In addition, the proposed exclusion was conditioned on there being no speculative accumulation or land placement (thus ensuring that the secondary materials would not be stored such that they could become part of the waste disposal problem), and that the coke product itself not exhibit a characteristic of hazardous waste, which, along with existing product specifications, would serve to ensure that the quality of the coke product would not degrade through the use of hazardous secondary materials such that it would become part of the waste disposal problem.

At the time of the proposal, the Agency did not distinguish between oil-bearing hazardous secondary materials used in either of the two aspects of the coking operations, i.e., in the conventional coking process (where secondary materials would be used as feedstocks) or during the quenching process (where secondary materials are mixed with water and injected into the coke during the quenching process). While the Agency was aware that oil-bearing hazardous secondary materials were being used in the quenching process at some refineries, the primary focus and intent of EPA's proposed exclusion was for secondary materials used as feedstock in the conventional coking process, with a secondary consideration being whether these secondary materials legitimately could be used in the quenching process. As the Agency learned through comments received, the hazardous secondary materials in question (i.e., listed hazardous wastes generated by petroleum refineries) are rarely, if indeed ever, used as feedstock along with the resids. EPA, therefore, has since focused its attention on the role of oil-bearing hazardous secondary materials in the quenching process, maintaining the key consideration that the exclusion is only intended for oil-bearing hazardous secondary materials used in a manner consistent with the main production purpose of the coking process, i.e., the recovery of light-end hydrocarbons for further refining and the production of a marketable coke product.

2. Recovered Oil From Associated Petrochemical Facilities

In the November 20, 1995 proposal, EPA proposed to add an exclusion at 40 CFR 261.4(a)(13) for recovered oil[2] that is generated by certain organic chemical industry facilities and inserted into petroleum refining processes provided that certain conditions are met (i.e., the petrochemical recovered oil is not stored in a manner involving placement on the land, or accumulated speculatively before being recycled) (see 60 FR at 57755. The proposed exclusion only applied to petrochemical recovered oil from organic chemical manufacturing facilities that were within the SIC code 2869, and was further limited to situations where the petrochemical and petroleum refinery facilities were either co-located, or under common ownership (co-owned). (Id).

As described in the proposed rule, the recovered oil exclusion that was promulgated in the July 28, 1994, final rule did not apply to oil from organic chemical industry operations except in cases where petrochemical and petroleum refining operations share a common wastewater treatment system. In these instances, because a portion of the oil recovered during wastewater treatment and returned to petroleum refining originates from organic chemical manufacturing, some industry representatives questioned whether a ''petroleum industry'' exclusion would apply. However, because of the predominance of petroleum refining wastewaters in the shared wastewater treatment systems, and the degree of integration between these facilities, the Agency believed that it was appropriate to apply the July 28, 1994, recovered oil exclusion to the oil recovered from *shared* petrochemical and petroleum refining wastewater treatment systems. (see 61 FR at 13104). The EPA subsequently became aware that some petrochemical facilities recover oil from their process streams in a manner distinct from wastewater treatment operations and send this material (so-called ''dry'' hydrocarbon streams) to

[2] Recovered oil, as defined within the context the exclusion from the definition of solid waste promulgated in the July 28, 1994, final rule, includes materials that are primarily oil and that are recovered from any phase of petroleum exploration, production, refining, and transportation related thereto. Oil recovered from petrochemical facilities associated with petroleum refineries, whether from shared wastewater treatment systems at co-located facilities, or from other ''dry'' streams recovered from petrochemical process units, are referred to here as ''petrochemical recovered oil.''

petroleum refineries for insertion into the refining process. In some cases these hydrocarbon materials might or might not be viewed as solid wastes when returned to petroleum refining operations as feedstocks in producing the normal slate of refinery produced fuels. After promulgation of the July 28, 1994, rule, EPA received information from the chemical manufacturing industry indicating that these ''dry'' hydrocarbon streams recovered from their operations are comparable to oil recovered from petroleum refining operations, i.e., are chemically comparable to the recovered oil already excluded from being a solid waste. As explained in more detail in the proposed rule, the exclusion for petrochemical recovered oil was therefore based upon two specific arguments raised by both the chemical manufacturing and petroleum refining industries. First, knowledge of the composition of these petrochemical recovered oil streams is very important because of the potential for adverse impacts on both refinery operations (e.g., equipment corrosion, catalyst fouling) and product quality (e.g., introduction of contaminants that degrade motor fuels) if these streams contain constituents not typically encountered in normal refinery feedstocks. Second, analytical data the Agency received prior to proposal supported industry's premise that recovered oil from petrochemical operations is similar in composition to that from petroleum refining, and is therefore suitable for insertion into the petroleum refining process.[3] EPA based the proposed exclusion for petrochemical recovered oil on a very limited set of data from integrated petrochemical and petroleum refineries that were either co-located or co-owned, and EPA believed that this was a typical arrangement for the return of these hydrocarbon streams to petroleum refineries (see 60 FR at 57756). In the proposal, EPA solicited additional data which could support broadening the exclusion to recovered oil from other SIC codes representing other types of associated chemical manufacture (e.g., plastics and resins, synthetic rubber, cyclic crude and intermediate producers). (Id).

3. Use of Spent Caustics as Feedstock

EPA proposed an exclusion from the definition of solid waste that would clarify that spent liquid treating caustics from petroleum refineries used as feedstock in the manufacture of naphthenic and cresylic acid products are not solid wastes. EPA believed that, when used in this manner, spent caustic is a valuable commercial feedstock that is used in the manufacture of commercial chemical products. Therefore, EPA proposed to add a new § 261.4(a)(14) to exclude spent caustic when used in this manner.

B. Proposed Listing Decisions

1. Summary of Proposed Decisions

EPA evaluated 14 wastes (the consent decree ''listing residuals'') in the petroleum refining industry, proposing to list 3 of these wastes as hazardous and not the other 11 wastes. Further general background for this rule is provided in the preamble to the proposed rule at 60 FR 57748–57749. As a result of numerous comments on the proposed rule, EPA conducted additional analyses for these wastes, resulting in the Agency's publishing a Notice of Data Availability (NODA) on April 8, 1997 (62 FR 16747). This Section summarizes the issues raised in the proposed rule and the following Section describes the NODA.

The Agency proposed to list as hazardous the following three wastes:

K170—Clarified slurry oil storage tank sediment and/or in-line filter/separation solids from petroleum refining operations.

K171—Spent hydrotreating catalysts from petroleum refining operations. (This listing does not include ceramic support media.)

K172—Spent hydrorefining catalysts from petroleum refining operations. (This listing does not include ceramic support media.)

The Agency proposed not to list as hazardous the following eleven residual categories:

- Crude oil storage tank sediment
- Unleaded gasoline storage tank sediment
- Off-specification product and fines from thermal processes
- Catalyst from reforming
- Catalyst from sulfuric acid alkylation
- Sludge from sulfuric acid alkylation
- Hydrofluoric acid alkylation sludge
- Spent caustic from liquid treating
- Catalyst and fines from catalytic cracking
- Catalyst from sulfur complex and hydrogen sulfide removal facilities
- Sludge from sulfur complex and hydrogen sulfide removal facilities.

EPA also noted that its decision not to list crude oil storage tank sediment was a close call, and that the Agency may choose to list this waste as K169, depending on further evaluation of the data and comments.

The proposed listing determinations were based on the Agency's evaluations at the time as to whether the wastes met the criteria in 40 CFR 261.11(a) for listing wastes as hazardous. EPA assessed and considered the factors contained in these criteria primarily by incorporating them as elements in a risk assessment. A detailed summary of the risk assessment methodology is found in the preamble to the proposed rule, Section III.F, ''Description of Health and Risk Assessments'' (60 FR 57756–57762). EPA's view at the time of proposal, the applicability of the risk assessment to particular waste streams, and the proposed reasoning for the listing decisions are found in Section III.G., ''Waste-Specific Listing Determination Rationales'' (60 FR at 57762–57776).

EPA also proposed a number of exemptions for the wastes proposed for listing, described below.

Headworks Exemption

In the proposal, EPA noted that some refineries manage the wastes EPA proposed for listing in their wastewater treatment system, while and others may scour residual sludge of the wastes proposed for listing during vessel cleaning or tank washing into the refinery wastewater treatment system. A consequence of listing these wastes as hazardous would be to cause all wastewaters and wastewater treatment sludges to be derived from those wastes.

The Agency noted in the proposal that, provided the residuals derived from the wastes proposed for listing are discharged to the oil recovery sewer system, the residuals carried into the wastewater system would be removed during primary treatment as sludges or other wastes that are already regulated hazardous wastes (e.g., K048, K051, F037, or F038). Accordingly, the Agency proposed not to include these wastewaters in its listing determinations and to modify an existing regulation at 40 CFR 261.3(a)(2)(iv) to provide that these wastewaters would not be considered hazardous wastes. This exemption, known as the ''headworks exemption,'' was discussed in the preamble for the proposed rule at 60 FR 57750 and 57781. The proposal noted that the exemption would apply to wastewaters containing clarified slurry Oil (CSO) sediment and, if EPA decided to list crude oil storage tank sediment in the final rule, this waste as well.

Exemption for Catalyst Support

Upon removal from catalyst beds and/or during catalyst regeneration or reclamation, spent catalysts are separated from the support media that

[3] September 13, 1995, letter to Becky Daiss (EPA Office of Solid Waste) from Michael W. Steinberg (Morgan, Lewis & Bockius).

are used in the catalytic reactors to optimize mixing and flow within the reactor beds. The Agency proposed an exclusion from RCRA regulation (under 40 CFR 261.3(c)(2)(ii)) for these support media because the support media are generally inert ceramics, separate from the catalyst, and commonly managed separately.

Third Party Recycling of Spent Petroleum Catalysts

Spent hydrotreating and hydrorefining catalysts, two of the wastes proposed for listing (as K171 and K172, respectively), are frequently regenerated for reuse or reclaimed off-site to recover nonprecious metals (e.g., nickel, molybdenum, cobalt, and vanadium) and other compounds sold as products (i.e., aluminum sulfate derived from the alumina substrate material).

In the proposed rule preamble in Section III.J.1., ''Third Party Regeneration/Reclamation of Spent Petroleum Catalysts'' (60 FR 57781), EPA proposed to clarify the regulatory status of units that regenerate or reclaim these catalysts. The proposal would have clarified that these units are specifically excluded from regulation as industrial furnaces under EPA's boiler and industrial furnace (BIF) rules at 40 CFR Part 266, Subpart H. The proposed clarification was based on a number of factors, including EPA's view that the units differed from those considered for the BIF rule and the Agency's general view that it did not want to impose an unnecessary regulatory burden that may serve to discourage environmentally safe recycling of spent petroleum catalysts.

The proposal also stated, however, that EPA had not fully evaluated the prevalence and adequacy of existing emission controls and the potential for uncontrolled emissions of toxic organic compounds, toxic metals, and particulate matter from spent hydrotreating and hydrorefining catalysts. Accordingly, the Agency stated that if it found that emissions from these units pose a threat to human health and the environment, it would reconsider the proposed clarification of the BIF rule and even could determine that the rule should, instead, be amended to specifically *apply* to spent petroleum catalyst recovery units. Thus, EPA solicited comment on the adequacy/efficiency of existing controls and data quantifying the levels emitted of hazardous air pollutants (HAPs) regulated under RCRA and/or section 112 of the Clean Air Act Amendments. The Agency indicated that it had made a preliminary finding that these units are already equipped with pollution controls comparable to those required under the BIF rule such that further regulation may be unnecessary.

Application of the Existing Exclusion for Spent Sulfuric Acid

As described in the proposal, EPA previously excluded from the definition of solid waste spent sulfuric acid used to produce virgin sulfuric acid (40 CFR 261.4(a)(7)). The Agency reexamined this exclusion as it pertains to sulfuric acid used as a catalyst in refinery alkylation processes and found no reason to change the existing regulatory structure.

2. Summary of Proposed Risk Assessment Approach

The proposed rule preamble describes in detail the various risk assessment analyses EPA carried out to determine the potential risk that might arise from the disposal of the refining wastes under consideration in this rule (see 60 FR at 57756–57762). In carrying out the modeling for these assessments, EPA used available data it collected for this industry, supplemented by data gathered from surveys of waste management practices (e.g., EPA's National Survey of Solid Waste (Municipal) Landfill Facilities, 1988, in the docket). The Agency also used information gathered in a questionnaire prepared under RCRA 3007, hereafter referred to as the ''3007 Questionnaire,'' and site visits designed to examine the waste characteristics, waste management practices, and potential pathways for release and exposure.

While EPA used this empirical data as much as possible in its risk assessment, the Agency nevertheless found that data gaps existed in the available information. Therefore, EPA also used other generic input parameters in the fate and transport models used to estimate the risk a waste might present under management scenarios known or likely to occur. The Agency used available data to develop input parameters for the concentrations and toxicity of constituents in the waste, the mobility and fate of such constituents in different disposal scenarios, likely exposure routes under these scenarios, and the location of various persons (''receptors'') that might be exposed. These receptors might be persons who consume contaminated groundwater, breathe air containing contaminants, or ingest contaminated soil or food.

EPA considered what waste management scenarios to model, based on existing and potential practice in the refinery industry. Also important to the risk analyses are the volumes of wastes disposed and the potential for constituents in the waste to be released. Total volumes of waste were derived by multiplying the amount of wastes disposed in any given year times the active life for the disposal unit (how long a disposal unit accepts waste before closure). The fraction of the waste in the disposal unit (waste fraction) was derived from the total volume of a waste placed in the unit and the unit's capacity. While various waste management practices were considered, the Agency's modeling focused primarily on potential releases from waste volumes sent to nonhazardous (Subtitle D) landfills and land treatment units (LTUs), both on and off the refinery site (on-site and off-site units). For on-site, units EPA used the data on unit size available from the 3007 Questionnaire. For off-site landfills, EPA used generic data available for Subtitle D unit size available from surveys of industrial and municipal waste management facilities.

To estimate the significance of any potential releases of constituents from the disposal units and the potential for exposure to people or the environment, EPA first considered the mode of migration out of the landfill or LTU. The exposure of most concern for landfills arises from the release of constituents from the waste to groundwater. Other exposure routes were considered only in preliminary analyses, and did not present significant risks. EPA used the Toxicity Characteristic Leaching Procedure (TCLP) to estimate the mobility of constituents in leachate that may be released from a landfill to groundwater. EPA also considered the potential for oil in the wastes to facilitate release and transport of constituents from landfills by ''oil-phase flow.'' Such facilitated release might occur if free oil in wastes, potentially containing hazardous constituents, migrated from landfills to groundwater. However the Agency's analysis showed this type of facilitated release was not likely. For LTUs, the wastes are mixed with soils on the surface of the unit. Potential exposure routes of most concern for land treatment arose from the transport of contaminated soils to receptors by both wind-borne air releases, and the erosion/run-off caused by precipitation. Groundwater risks from LTUs were not found to be significant.

To model the transport of constituents to receptors, EPA typically used data available from surveys to locate the likely exposure point. Thus, to assess potential groundwater exposures near landfills, EPA used national surveys of landfills, which included data regarding

the distance from landfill units to nearest drinking water well. For LTUs, EPA used surveys of the distance of residences from such disposal units. Where appropriate, EPA attempted to consider information related to the biodegradation some constituents may undergo in the unit or after release into the environment.

The Agency used comparisons between concentrations in the environment and health-based levels (HBLs) to evaluate the potential health impacts of toxic constituents in environmental media, such as soil or groundwater. For noncarcinogenic constituents, the HBL is the concentration in the media which results in an exposure level equal to the ''reference dose;'' the reference dose is EPA's measure of an acceptable daily intake for a specific chemical. For carcinogenic constituents, the HBL is the concentration in the media that results in an exposure level corresponding to a specified cancer risk level. EPA applied carcinogenic potency estimates (Carcinogenic Slope Factors) to calculate specific risk levels. The risk assessment results are given in terms of individual risk, i.e., the carcinogenic risk is described in terms of the additional incidence of cancer that may occur in an exposed population. A risk of 1×10^{-5} (which will be presented in this document as 1E–5), for example, corresponds to a probability of one additional case of cancer for every 100,000 people exposed. The Agency also evaluates carcinogenic constituents by directly calculating the estimated cancer risk level resulting from a given concentration of the constituent in the environmental media.

In the modeling for risk assessment, EPA varied some of the more sensitive parameters to examine the range or potential risks presented by the wastes studied. Key parameters included the area of the waste disposal units, waste volumes disposed, constituent concentrations in the wastes, and the distances to receptors. Varying several of these key parameters at one time can have a large cumulative impact on the risk results. In view of the variation in individual exposure risks that could exist for the wastes, EPA performed a number of different types of risk and sensitivity analyses. First, the Agency completed a ''bounding analysis'' in which the key input parameters were set to produce a worst-case scenario. This analysis was intended to purposely overestimate exposure to establish an upper bound for risks. (See the EPA guidance memo entitled, Guidance on Risk Characterization for Risk Managers, 1992; docket number F–95–PRLP–S0423, hereafter known as the Habicht memo, 1992.) Thus, all key parameters were set to their maximum or ''high-end'' values (typically the 90th percentile point on the distribution of values available for each parameter). If the risks resulting from the bounding analysis were below the level of any potential concern (i.e., carcinogenic risks below 1E–6 and hazard quotients (HQs) less than one), the wastes and/or waste constituents were removed from further consideration.

For wastes and constituents that did not ''bound out,'' EPA ran a double ''high-end'' deterministic sensitivity analysis, which produced point estimates of risk based on use of single values for input parameters. In this method, key input parameters were varied between the central tendency value (50th percentile) and the high-end (90th percentile) values. The point estimate in which all variables were set at central tendencies was assumed to be the central tendency risk estimate. The highest risk estimate for any combination of double high-end variables (with all other variables set at central tendency) was assumed to be the high-end estimate of risk. The high-end risk estimate was presumed by the Agency to be a plausible estimate of individual risk for those persons at the upper end of the risk distribution. The intent of these descriptors is to convey estimates of exposure in the upper end of the distribution (i.e., above the 90th percentile) and to avoid estimates that are beyond the true distribution.

After completing these various analyses, EPA compared individual exposure levels to HBLs for the toxic constituents to determine whether particular wastes are candidates for listing. In keeping with discussions of the Agency's listing policy (see Dyes and Pigments Listing, 59 FR at 66075–66078), EPA used a risk level of concern of 1E–5, and/or HQs of one, to determine which wastes are considered initial candidates for listing. To make listing determinations, EPA then used a weight-of-evidence approach that considers the risk estimates along with other evidence related to the factors described in 40 CFR 261.11(a)(3).

Based on EPA's analysis for the proposed rule, the exposure pathway of concern for the landfill scenario was ingestion of groundwater contaminated by constituents leaching out of the unit. For the land treatment scenario, the potential release of wastes by air or run-off yielded exposure for nearby residents and home gardeners via soil ingestion and for other subpopulations (fishers, farmers) through indirect exposures, i.e., via ingestion of contaminated fish and food. These analyses led to the proposed listing decisions as explained in the preamble to the proposed rule.

C. Notice of Data Availability

Many issues were raised by commenters on the proposed rule causing EPA to rethink its analyses and the risk assessments. These issues are discussed in the April 8, 1997 NODA (62 FR 16747) and the accompanying support documents. EPA conducted new risk assessments for both groundwater and non-groundwater pathways, in addition to analyses for the headworks exemption, recycled hydrocarbon-bearing materials, and leaching of oily wastes. This new information was presented for comment. At the time, EPA believed that the additional analyses tended to support the proposed rule and did not propose any new listing decisions. Important additional analyses provided in the NODA are briefly described below.

The NODA provided revised ''high-end'' analyses for the landfill and LTU scenarios. In the groundwater analysis, EPA completed more detailed sensitivity analyses and Monte Carlo analysis to better define high-end risks, and determine how close the high-end risks, were to the 90th percentile.

The Agency has been using Monte Carlo modeling methodology in various rulemakings for many years. Monte Carlo modeling is a statistical technique that can be used to simulate the effects of natural variability and informational uncertainty which often accompany many actual environmental conditions. It is a process by which an outcome is calculated repeatedly for many situations, using in each iteration randomly selected values from the distributions of each variable input parameter. When compared with alternative approaches for assessing parameter uncertainty or variability, the Monte Carlo technique has the advantages of general applicability and no inherent restrictions on input distributions or input-output relationships. Monte Carlo application results can also be used to calculate uncertainty, and can be used to quantitatively specify the degree of conservativeness used. However, potential limitations also exist when applying Monte Carlo techniques in modeling efforts. Variability (inherent variation in a measure over time and space) and uncertainty (lack of knowledge) may be difficult to distinguish within applications. Also, correlations among the various data parameters that have not been accounted for in the modeling may

distort conclusions. Finally, sufficient data must generally be gathered to ensure that acceptable statistical representations and sensitivity analyses within Monte Carlo applications can be properly prepared.

The Monte Carlo simulations used in this rulemaking assessed the full distributions of critical input data (e.g., distance to well, waste volumes, landfill area) to randomly generate receptor well concentrations of key constituents for certain landfill situations, and then combined the results from many runs (10,000) to produce a probability distribution of risks. EPA was then able to choose points along the probability distribution of risk for comparison to the high-end analysis. For example, a risk that corresponds to the 95th percentile for a specific waste constituent in a landfill means that the risk would be below this level in 95 percent of the runs. EPA also modified all groundwater risk analyses to add risks due to noningestion exposures (e.g., via inhalation and dermal absorption during showering) to the ingestion risks that may arise from residential use of groundwater.

Further groundwater analysis was also performed in response to comments on the proposed rule that noted EPA had used waste input data (TCLP) that exceeded the existing Toxicity Characteristic (TC) threshold and that disposal in nonhazardous landfills was unlikely for such wastes. This additional groundwater analysis limited the TCLP input used in modeling, such that none of the input levels exceeded the TC threshold, to examine the impact on risk results (the ''TC-capped'' analysis).

In the nongroundwater analysis presented in the NODA, EPA incorporated several modifications for LTUs, including: limiting wastes volumes modeled to nonhazardous waste; limiting unit characteristics used (e.g., unit area) to nonhazardous units; correcting an error in the air dispersion modeling; minor changes to the models used to estimate release and transport of contaminated soil to off-site receptors; and incorporating further biodegradation of key constituents after they travel off-site.

The appropriateness of the TCLP for petroleum wastes containing oil and the potential for oil and other materials to facilitate release and transport of wastes in landfills were major areas of comment. EPA provided additional information in the NODA to respond to this issue, including; analysis of the oil content of the waste samples, the prevalence of disposal of oily waste in landfills, analysis using alternative leaching procedures, and calculated TCLP leaching efficiencies for organic constituents in the wastes.

EPA received comments on its choice of management practices modeled and the way volumes were allocated. Some commenters also suggested that volumes of wastes beyond those under consideration in this rule should have been considered in various codisposal scenarios for both landfills and LTUs. In response, EPA presented risk analyses in the NODA that assessed the potential impact of codisposal of the listing residuals with certain other refinery wastes.

In the NODA, EPA presented additional analyses to address comments on the headworks exemption for CSO storage tank sediment. While some commenters did not favor the exemption due to potential impacts on downstream wastes, other commenters argued the exemption should be expanded to exclude wastewater from spent hydrotreating and hydrorefining catalysts, the other two wastes EPA proposed for listing. The Agency evaluated the potential impact of including wastewater from these three wastes in the headworks exemption, and presented the results in the NODA that showed excluding them would not result in any significant risks in the downstream wastes.

Comments on the proposal suggested that the active life for a landfill used by EPA was too short. This parameter is important because it determines the total waste volume in the modeled landfill, which is one of the critical input parameters for the model. To respond to this comment, EPA presented data in the NODA for on-site landfills to show that the data in the 3007 Questionnaire supports the Agency's assumption of a 20-year active life.

The NODA also presented other information related to: the potential impact of the oil-bearing residuals exclusion on coke product, the potential for concurrent exposure to releases from landfills and LTUs, and the applicable UTS under the Land Disposal Restrictions program.

IV. Changes to the Proposed Rule

As a result of comments on the proposed rule and NODA analyses, certain modifications were made to the listing determinations and definition of solid waste exclusions. These changes and the subsequent scope of today's final action are described below. Detailed reasoning behind these changes is provided in Section V.

A. Definition of Solid Waste Exclusions

1. Exclusion of Oil-Bearing Hazardous Secondary Materials Inserted Into Petroleum Refining, Including Petroleum Coking

Today, the Agency is finalizing a portion of the proposed exclusion for oil-bearing hazardous secondary materials recycled within the petroleum industry. Specifically, oil-bearing hazardous secondary materials generated within the petroleum refining sector (i.e., SIC code 2911, petroleum refineries) are excluded under today's rule when they are to be inserted into the petroleum refining process, including into the petroleum coker, provided they are not placed on the land or speculatively accumulated before being so recycled. As discussed below, this exclusion applies to any oil-bearing material generated at a petroleum refinery, including oil-bearing wastes currently regulated as listed hazardous wastes (e.g., K048–K051), and including refinery wastes newly listed under today's rulemaking that are suitable for insertion into normal petroleum refining operations. EPA is not finalizing the proposed exclusion for oil-bearing hazardous secondary materials generated elsewhere within the petroleum industry, such as from petroleum exploration and production sites, bulk crude oil storage, and petroleum industry-related transportation facilities. However, the pre-existing recovered oil exclusion promulgated July 28, 1994, is still being retained under today's rule with respect to recovered oil generated from within the petroleum industry. EPA is also modifying an existing petroleum-industry listing (F037) to make it apply to discarded residues generated from processing or recycling petroleum-industry listed hazardous wastes that are otherwise excluded under today's provision.

The Agency notes that this exclusion will have little net effect on the materials or units involved. Under the current regulatory program (i.e., prior to today's amendments), oil-bearing secondary materials may legitimately be recycled into a petroleum coker. While such materials may be considered solid and hazardous wastes, the coking unit would be a recycling unit exempt from permitting requirements (40 CFR 261.6(c)(1)). The coke product is exempt under 40 CFR 261.6(a)(3)(v), provided the secondary materials are generated by the same ''person,'' defined in 40 CFR 260.10 as ''an individual, trust, firm, joint stock company, Federal agency, corporation (including a government corporation), partnership, association,

State, municipality, commission, political subdivision of a State, or any interstate body,'' and the petroleum coke does not exhibit a characteristic of hazardous waste. The oil recovered in the coking operation (including both conventional coking and the quenching process) which is used to produce fuels is excluded from the definition of solid waste as recovered oil under 40 CFR 261.4(a)(12).

2. Recovered Oil From Associated Petrochemical Facilities

In today's final rule, EPA is finalizing a somewhat narrower exclusion than originally proposed. Specifically, EPA proposed to exclude recovered oil from ''associated organic chemical manufacturing facilities'' where such facilities were defined as those within the SIC code 2869 and either co-located or under common ownership with the petroleum refinery receiving the petrochemical recovered oil. In today's rule, EPA is dropping ''under common ownership'' from the definition of ''associated organic chemical manufacturing facility'' for reasons discussed later. In addition, EPA is limiting the applicability of the final exclusion to petrochemical recovered oils that are hazardous only because they exhibit the characteristic of ignitability (as defined in 40 CFR 261.21) and/or toxicity for benzene (40 CFR 261.24, waste code D018). Finally, in today's rule, EPA is also excluding petrochemical recovered oil generated at facilities where the primary SIC code is 2869, but where three other classifications of chemical manufacturing units commonly occur at these vertically-integrated facilities (SIC codes 2821, 2822,2865).

3. Use of Spent Caustic as Feedstock

Today EPA is finalizing the exclusion proposed for spent caustic solutions from petroleum refining when used as feedstocks to produce cresylic or naphthenic acid. This new exclusion is being added at 40 CFR 261.4(a)(19).

B. Listing Determinations

Table IV–1 presents a summary of changes to the proposed listing decisions. Detailed bases for today's final listing determinations are discussed in Section V.C for each specific waste.

TABLE IV–1.—COMPARISON OF PROPOSED AND FINAL LISTING DECISIONS

Waste Stream	1995 Proposal	Final decision	Basis for decision
Hydrotreating Catalyst	List	List	Groundwater risks due to benzene and arsenic from landfill disposal; pyrophoric and self-heating nature of waste.
Hydrorefining Catalyst	List	List	Groundwater risks due to benzene and arsenic from landfill disposal; pyrophoric and self-heating nature of waste.
CSO Storage Tank Sediment	List	List	Nongroundwater risks due to PAHs from land treatment disposal; some groundwater risks due to benzene from landfill disposal; high PAH and oil content.
Crude Oil Tank Sediment	No-list	List	Groundwater risks due to benzene from landfill disposal; PAH and oil content.
Unleaded Tank Sediment	No-list	No-list	Some groundwater risks due to benzene from landfill disposal, but no significant PAH or oil content; relatively low volume.
HF Alkylation Sludge	No-list	No-list	Relatively low groundwater risks due to benzene from landfill disposal; no significant PAH content; benzene found in only one TCLP sample.
Off-specification Product & Fines	No-list	No-list	Low groundwater risks due to PAHs from landfill disposal; PAHs only found in one TCLP sample near detection limit.
Other Wastes [1]	No-list	No-list	No significant risks from any pathway.

[1] Includes seven wastes: Catalyst from Sulfuric Acid Alkylation, Sludge from Sulfuric Acid Alkylation, Spent Caustic from Liquid Treating, Catalyst and Fines from Catalytic Cracking, Sludge from Sulfur Complex and Hydrogen Sulfide Removal Facilities, Catalyst from Sulfur Complex and Hydrogen Sulfide Removal Facilities, and Catalyst from Reforming.

In response to additional comments submitted on the NODA, the Agency further examined the record and reconsidered the entire risk assessment and decisions for all the wastes under consideration. Commenters on the NODA provided detailed comments on the groundwater modeling approach used by EPA. Some commenters submitted their own groundwater modeling, purporting to show higher risks than EPA's evaluation for a number of wastes. While the commenters used the same model as EPA (EPACMTP), they adjusted key input values to increase landfill area, increase active life of landfills and resulting volume disposed, move the receptor well location to the middle of the plume of contamination, increase TCLP concentrations using simplifying assumptions, and increase volumes due to codisposal. To respond fully to critical issues raised in comments on the groundwater risk analysis, EPA decided to make modifications to some modeling assumptions and data inputs. EPA examined the impact of other suggestions by the commenters, but found these to be of no importance or did not agree that the changes were warranted. The changes to the modeling, and EPA's reasons for not accepting other suggestions, are discussed in detail in Section V.B.

Specifically, in response to NODA comments, EPA decided that some revisions in the modeling assumptions were appropriate. Thus, the Agency performed additional risk analyses to reflect an increase in the active life for off-site landfills (which resulted in increased volume input to the modeling), and the use of off-site municipal landfill area distributions, rather than the areas for industrial landfills used previously. With these changes, the final revised high-end and Monte Carlo risks increased somewhat from those presented in the NODA for off-site landfills and are summarized in Table IV–2. Also, in conducting the Monte Carlo analysis for the NODA, the Agency made a key assumption concerning well location which was inconsistent with the assumption made for the high-end analysis (see discussion of receptor well location in Section V.B.6). Therefore, EPA performed further Monte Carlo analyses using well location assumptions consistent with the high-end analysis, and the results show that this also increases risks, such that the 95th percentile Monte Carlo risks are more comparable to the high-end risks. Finally, while reexamining the groundwater risk analysis for off-specification products and fines, EPA corrected errors in waste volumes and a

health-based level used for prior analyses.

(See Additional Groundwater Pathway Risk Analyses, 1998, in the public docket for this rule for details on the revised analyses.)

The final risk results for off-site landfills, with the changes noted above, are summarized in Table IV–2 for wastes of concern. Other wastes either did not have significant risk in bounding analyses, or were not modeled for landfill disposal because the practice was not found.

TABLE IV–2.—SUMMARY OF REVISED GROUNDWATER RISKS FOR PETROLEUM WASTES IN OFF-SITE LANDFILLS

Waste	Constituent	Revised risks [1]		TC-capped risks [2]	
		High-end risk [3]	Monte Carlo Risk [4] (95th%)	High-end risk	Monte Carlo risk (95th%)
Clarified Slurry Oil Tank Sediment	benzene	4E–06	2E–06	NC	NC
Hydrotreating Catalyst	benzene	1E–04	3E–05	3E–05	9E–06
	arsenic	8E–05	2E–05	NC	NC
Hydrorefining Catalyst	benzene	7E–05	2E–05	3E–05	8E–06
	arsenic	6E–04	4E–04	6E–04	4E–04
Crude Oil Storage Tank Sediment	benzene	4E–05	1E–05	3E–05	9E–06
Unleaded Gasoline Storage Tank Sediment	benzene	3E–05	6E–06	2E–05	4E–06
HF Alkylation Sludge	benzene	1E–05	2E–06	NC	NC
Off-Specification Product and Fines	benzo(a)anthracene	2E–06 [5]	1E–06	NC	NC
		5E–07 [6]	8E–07		
Codisposal Scenario	benzene	8E–06	3E–06	NC	NC
	arsenic	4E–06	2E–06	NC	NC

[1] Revised risk includes new inputs for active landfill life (30 yr.) and municipal landfill areas.
[2] Input leaching rates were capped at TC regulatory levels for disposal in Subtitle D landfills (0.5 mg/L for benzene and 5.0 mg/L for arsenic); NC = no change because TCLP values were already below TC levels.
[3] Risks using high-end values for two most sensitive parameters, and remaining parameters kept at median values.
[4] Risks using Monte Carlo simulation runs at the 95th percentile level with well location restricted to plume.
[5] Estimated TCLP input assumed to be mean value.
[6] Estimated TCLP input assumed to be one high-end parameter.

The nongroundwater risk results for land treatment are unchanged from those reported in the NODA (see 62 FR at 16753). However, in response to comment EPA performed a Monte Carlo uncertainty analysis for land treatment risks that supports the results presented in the NODA. See Section V.B of today's notice for further discussion of this issue.

The revised groundwater risk assessment for landfills, in conjunction with the nongroundwater assessment for land treatment disposal presented in the NODA, continues to support the proposed listing of K170, K171, and K172. Therefore, EPA is promulgating these listings in today's final rule, with minor modifications to clarify the definition of the two spent catalysts (see Section V.C.3).

K171—Spent hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic units. (This listing does not include inert support media.)

K172—Spent hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic units. (This listing does not include inert support media.)

In addition, EPA has determined that the available information and the revised groundwater risk assessment provides sufficient basis to list as hazardous crude oil storage tank sediment, and to have the waste designation of K169. The listing will read:

K169—Crude oil storage tank sediment from petroleum refining operations.

All final listing determinations depend upon EPA's consideration and review of public comments submitted in response to the proposed determinations, issues raised in the NODA, and any other relevant information available to the Agency. The final determinations are based on the Agency's evaluations as to whether the wastes meet the criteria in 40 CFR 261.11(a) for listing wastes as hazardous. EPA has assessed and considered the factors contained in these criteria primarily by incorporating them as elements in the revised risk assessment, which is based on the methodology described in the preamble to the proposed rule and subsequent modifications described in this preamble and in support documents in the rulemaking record. EPA bases its final listing determinations on the entire rulemaking record, including applicable sections of the preamble to the proposed rule, additional analyses provided in the NODA, the Agency's responses to the comments on significant issues raised in the preamble to the proposal and the NODA, and all other relevant information available to the Agency.

C. Other Exemptions

1. Headworks Exemption

EPA presented analysis in the NODA to support the headworks exemption for both wastewater associated with CSO tank cleaning and the expansion of the exemption to include water discharges from the clean-out and turn around of hydrotreating and hydrorefining catalytic units. After considering all comments on these analyses, EPA has decided to promulgate the expanded headworks exemption. As noted in the proposal, EPA intended to include crude oil storage tank sediment in the exemption, if this waste was listed. Thus, EPA is also promulgating the exemption for K169 as well. To fully respond to all comments, EPA completed an analysis of the impact of the discharge of crude oil storage tank sediment to the wastewater treatment system, which demonstrates that the discharge is unlikely to adversely impact downstream wastes. This decision is discussed in V.D, and supporting analyses are presented in the docket for this notice.

In amending the headworks exemptions under 40 CFR 261.3(a)(2)(iv)(C), the Agency intends the exemption to apply to wastewaters from cleaning operations when these wastewaters reach the headworks of the wastewater treatment system. As noted

in the proposal, however, the exemption is not intended to allow the discharge of the entire waste stream (i.e., tank sediments or spent catalysts), but rather dilute waters generated during tank or unit clean-outs and dewatering operations.

2. Exemption for Catalyst Support

The Agency is finalizing the proposed exemption (under 40 CFR 261.3(c)(2)(ii)) for these support media because the support media are generally inert materials and commonly managed separately. EPA is clarifying the exemption so that it is no longer limited to ceramic material, based on comments indicating that other inert materials, such as stainless steel, are also used.

3. Third Party Recycling of Spent Petroleum Catalysts

EPA does not believe at this time that it is appropriate to issue the proposed clarification to exempt, from permitting requirements under Part 266.100(b), third party units regenerating and reclaiming hydrotreating and hydrorefining spent catalysts. EPA is deferring to a later day any final decision on whether or not to clarify the BIF rule with respect to these wastes. In the meanwhile, EPA reiterates that nothing in today's rule (or indeed the proposal in this docket) changes the current RCRA status of facilities managing these hazardous wastes. (See Section V.E. for further discussion of this decision.)

V. Response to Comments and Rationale for Final Rule

The Agency is responding in this preamble to the most significant comments received in response to both the notice of proposed rulemaking and the NODA. Other comments received by the Agency are addressed in the Response to Comments Background Documents that are available in the docket associated with this rulemaking.

A. Proposed Modifications to the Definition of Solid Waste

1. Exclusion of Oil-Bearing Hazardous Secondary Materials Inserted Into Petroleum Refining, Including Petroleum Coking

Role of the Petroleum Coker in the Petroleum Refining Process

To determine RCRA jurisdiction, the Agency must differentiate between materials that are part of normal ongoing production activities and materials that are part of waste management, including recycling or treatment. Distinguishing waste management from normal production can sometimes be difficult when it involves hazardous secondary materials generated by certain production processes and used as feedstocks in other production processes within the same industry that produce a relatively low-value product (especially hazardous secondary materials that have sometimes been discarded in the past). (see 50 FR at 618–620, Jan. 4, 1985). Regarding the petroleum refining production process, classification of the coking operation has been historically troublesome in delineating production from waste management because it is not typical of other refining processes.

Generally, and in the most basic of terms, petroleum refining processes serve to separate and remove hydrocarbon components out of a feedstream, in effect constituting a multi-stage process of separating valuable product materials from the contaminants (e.g., sulfur and metals) inherent in the original raw material (crude oil). In the coking process, however, the contaminants inherent in the crude oil feedstock are incorporated into the fuel product, along with the carbon that results from the thermal breaking of complex hydrocarbon chains into more valuable small- and middle-chain oil fractions (see detailed description of conventional coking versus the quenching process in Section III.A.1.).

EPA first evaluated whether the conventional coking operation is a true production process because the crude oil distillation bottoms, i.e., resids, used as feedstock contain many of the unwanted contaminants in the original crude oil which end up in the coke product (a low-value fuel product, relative to the other fuel products produced by petroleum refining) and because a majority of the coke product is exported rather than being used within the United States. As stated earlier, this is not typical of a petroleum refining process producing a fuel product. Thus, an argument could be made that the petroleum coker is simply a means of disposing of unusable heavy oils and other contaminants associated with crude oil feedstocks (including hazardous heavy metals), while producing a relatively low-value fuel.

However, the American Petroleum Institute (API) supplied the Agency with detailed information regarding the conventional coking operation, presenting a description of the physical processes involved in the coking process and the economic value of the overall coking operation to the refinery, as well as the feedstocks used and products produced. As discussed in the November 20, 1995, proposal preamble (60 FR at 57754), the Agency has determined that the use of resids as feedstock to the petroleum coker is a legitimate production process whose main purpose is to thermally convert the heaviest crude oil fractions into light-end hydrocarbons (typically about 70 percent of the feedstock is recovered as lighter oil fractions) used as feedstocks for refinery processes that produce high-value fuel products. In many cases, the conventional coking operation is essential to the profitable production of petroleum products from heavier crude oil feedstocks, being a cost-effective process for maximizing the amount of hydrocarbon that can be recovered from the crude oil feedstocks. The coke product itself may best be characterized as a co-product of the coking operation, while the principal products are the light ends that are returned to the refining process. Thus, the Agency is affirming that the conventional coking operation is a production process resids are normal feedstocks to this process and petroleum coke is a legitimate fuel product (although EPA in fact notes that high-grade petroleum coke meeting relatively exacting specifications is used for producing anodes for use in electric furnaces, such as for steel and aluminum manufacturing).

However, the fact that the Agency considers the conventional coking operation to be a normal production process does not mean that any material introduced to the coking operation is, by definition, part of a normal production process. Indeed, when considering the regulatory status of hazardous secondary materials not typically used as feedstocks being introduced into such a process, the Agency must consider whether such use of the secondary materials is legitimate use in a production process, or rather is sham recycling where unwanted contaminants are being removed of under the aegis of an ostensible manufacturing operation. Typically, this is evaluated through a comparison to the normal feedstocks, with particular focus given to whether there are hazardous constituents contained in a hazardous secondary material that are not found in the normal feedstock materials for which it is substituting (see 50 FR at 638, Jan. 4, 1985). EPA received many comments relevant to the exclusion for the hazardous secondary materials inserted into the petroleum coker, especially the quenching process, both supporting and opposing to the exclusion. Much information, both anecdotal and analytical data, was received concerning various aspects of

the overall coking operation. This information included the constituent composition of the hazardous oil-bearing secondary materials at issue, the normal coker feedstocks, various aspects of the overall coking operation, the coke product, and the marketing of petroleum coke. The Agency made a very considered evaluation of all of the information provided in comment to the proposal, much of which was contradictory and difficult to confirm. The discussion below presents the Agency's reasoning in making its determination.

Use of Hazardous Secondary Materials in the Petroleum Coker

The Agency evaluated information received on the role of oil-bearing hazardous secondary materials in the coking operation. As discussed more below, the oil-bearing hazardous secondary materials typically put into the coker unit are unable to be processed via conventional coking because of their high water content (the water would volatilize and create unsafe pressures during the conventional coking process). Therefore, the Agency's evaluation centered around the role of these secondary materials in the quenching process, described in more detail in Section III.A.1. of today's preamble. In evaluating this information, the Agency's focus was to determine whether the use of oil-bearing hazardous secondary materials in the quenching process is consistent with the role of oil-bearing feedstocks in the conventional coking process, i.e., to provide hydrocarbon for further refining and to contribute carbon to the coke product. (EPA's reasoning is that it is the recovery of hydrocarbon and production of coke that is the intent of the overall coking operation, and thus the legitimate use of a hazardous secondary material in the quenching process should likewise contribute to this intent.) This evaluation compared not only the constituent make-up of the feedstocks to both conventional coking (resids) and to the quenching process (hazardous secondary materials), but also what physical/chemical processes occur in both aspects of the coking operation. The discussion that follows presents the Agency's evaluation.

In comparing the typical hazardous secondary materials used in the quenching process (i.e., listed hazardous wastes, primarily wastewater treatment sludges) to the residues normally used as feedstocks to conventional coking, the oil content in the hazardous secondary materials is much lower (ranging from around 8 percent to 40 percent in the hazardous secondary materials to around 99 percent in the crude oil distillate bottoms), while the water content is much higher. The hazardous constituents (primarily heavy metals) in the secondary materials are measurably higher. However, as stated above, the hazardous secondary materials are not used in conventional coking, but rather are used in the quenching process. Therefore, a comparison of the hazardous secondary materials to the resids feedstock has limited value and is not dispositive for determining the legitimacy of the activity, because the hazardous secondary materials are not substituting for the feedstock, but are instead being processed in a different manner than the conventional coking feedstocks.

As described earlier, there are two aspects of the coking operation for the Agency to consider: (1) conventional coking—which entails the application of high temperatures to the heavy oil-bearing feedstock in the coke drum in order to break the complex hydrocarbon chains into lighter chains that are recovered for further refining, also resulting in the production of coke product, and (2) the quenching process—which, for the purposes of the Agency's evaluation in today's rulemaking, entails the insertion of oil-bearing hazardous secondary materials along with, or just prior to, water used to quench the coke product before removal from the coke drum.

Because the hazardous secondary materials are not processed along with the normal feedstocks to the coker, but rather are introduced into the coke product during the quenching process, the assessment of ''legitimacy'' becomes somewhat more difficult since there is no analogous raw material. (The Agency notes that this is typically the situation when determining the applicability of RCRA regulations to secondary materials used in connection with innovative technologies or practices.) The hazardous secondary materials are typically mixed with water to form a slurry that is injected into the coke at the beginning of the quench cycle (in some cases, the secondary materials are not slurried and are inserted ahead of the quench water). The hazardous secondary materials are unable to be used in conventional coking because of their high water content; however, the water content is not detrimental during the quenching process. Thus, in determining the legitimacy of this activity, the task at hand is not a straightforward comparison with analogous nonwaste feedstocks, but rather an evaluation of the processing that occurs when these hazardous secondary materials are used in the quenching process, to determine whether this activity may be characterized as a ''normal'' production activity or whether it is better characterized as hazardous waste recycling, or even simply the disposal of hazardous wastes (i.e., sham recycling).

Indeed, some commenters opposed to the use of hazardous secondary materials in the petroleum coker raised the concern that the use of listed hazardous wastes in the quenching process is simply a means of disposing of RCRA hazardous wastes in a low-value product, much of which is exported overseas, and that if these materials truly had value to the coking process, they would be used as feedstock in the conventional coking process. Since it is obvious that these secondary materials would otherwise be hazardous wastes that would be treated and disposed of if not used in the quenching process, it would seem to be a simple matter, as some commenters have suggested, to ascribe a simple waste disposal motive to this activity and nothing more.[4] However, the Agency is compelled to go further and determine whether the oil-bearing secondary materials actually contribute to the product and/or process, or otherwise determine whether there is a production-related value to this activity.

The petroleum industry, on the other hand, believes that such an evaluation is unnecessary. Industry representatives argue that oil-bearing secondary materials used in the quenching process for legitimate recovery of hydrocarbon as either a light oil fraction or by incorporation in petroleum coke can never be a solid waste, i.e., that these materials must be excluded from being RCRA solid wastes as a matter of law.[5] Their argument is based on the initial case considering the scope of the statutory term ''solid waste,'' namely the first AMC I decision. In that decision, the Court held that ''materials that are recycled and reused in an ongoing manufacturing or industrial process''

[4] Indeed, internal industry literature, as well as public statements made by industry representatives, relevant to the use of hazardous secondary materials in the quenching operation would lead one to believe that the principal purpose of this activity is to dispose of hazardous waste sludges (see the January 9, 1998 letter from Richard Fortuna to Mike Shapiro); however, the Agency does not, as a rule, take such statements as determinative and evaluates the activity independent of how the process may have been characterized in other contexts. The Agency would do the same in situations where all such industry statements would indicate that a particular process is legitimate production, i.e., evaluate the merits of the activity independent of statements from interested parties.

[5] See January 23, 1998 letter from Paul Bailey to Michael Shapiro.

were not yet discarded and hence not ''solid wastes.'' (see 824 F.2d at 1186).

EPA disagrees that an exclusion is compelled (even assuming legitimate recycling is occurring). First, there is direct case authority that secondary materials which originate from wastewater treatment systems can be considered to be ''discarded'' (see AMC II, 907 F.2d at 1186 (''Nothing in AMC I prevents the agency from treating as 'discarded' the wastes at issue in this case, which are managed in land disposal units that are part of wastewater treatment systems, which have therefore become 'part of the waste disposal problem,' and which are not part of ongoing industrial processes'' (emphasis original)). Industry indicates that, primarily, the oil-bearing hazardous secondary materials utilized in the quenching process are wastewater treatment sludges (chiefly K048, F037, and F038), which are thus directly analogous to the sludges at issue in the AMC II decision, and thus could be considered to be discarded.

These sludges likewise could be considered to be solid wastes pursuant to RCRA section 3004(q)(2)(A) which indicates that certain provisions otherwise applicable to hazardous waste-derived fuels do not apply to petroleum coke produced from ''petroleum refinery wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated.'' The plain language of the provision can be read to cover the activity at issue here, and thus indicate that wastewater treatment sludges and other hazardous secondary materials going to quench coking could be classified as solid wastes.[6]

More basically, EPA does not regard the use of oil-bearing wastewater treatment sludges in the quenching process to be the type of operation which must necessarily be classified as part of an ongoing manufacturing process. The parts of the petroleum refining process outside the Agency's RCRA jurisdiction involve the sequential distillation of crude oil into various fractions such as gasoline, fuel oil, asphalt, and conventional coking. (see 824 F.2d at 1181). However, the quenching process need not be viewed as one more ongoing step in this process. Not only is there the temporal interdiction of the generation of wastewater and subsequent management of the wastewater and sludges in the refinery's wastewater treatment system, but the quenching process differs in material ways from the standard refining operations. As discussed above, the materials utilized have less oil, higher percentages of unusable materials, and the process generates less recovered oil than any other unit operation in the conventional refining process. The Agency thus does not accept the argument that exclusion of hazardous secondary materials used in the quenching process is legally compelled.

This is not to say that the Agency lacks the discretion to make such a determination. The term ''discarded'' is ambiguous, and within the Agency's authority to interpret consistent with the general goals and policies of the statute. (See AMC II, 907 F. 2d at 1186; American Petroleum Inst v. EPA, 906 F. 2d 726, 741 (D.C. Cir. 1990)). Among these goals, of course, is encouraging environmentally sound recycling (see RCRA section 1003(a)(6)). Moreover, assessing what can permissibly be classified as continuous industrial processes, and which types of material recovery operations are ''not part of the waste disposal problem'' (AMC II, 907 F.2d at 1186), are the types of technical and policy questions particularly committed to EPA's expert discretion. It is that discretion which the Agency is exercising in determining in this rule that a conditional exclusion is appropriate for certain hazardous oil-bearing secondary materials used in the coke quenching process.

In describing the use of oil-bearing secondary materials in the quenching process, industry claims that, similar to the process of coking resids feedstock, the oil contained in the secondary materials is either volatilized and condensed for further refining into high-value fuels, or is incorporated into the coke product. This activity may be characterized as the efficient use of existing heat energy in the hot coke to recover the oil contained in the sludges, oil which would otherwise not be recovered (the temperature of the coke is approximately 800–900 degrees F before it is quenched). The oil that is not volatilized gets incorporated into the coke product, adding to the coke's energy value. The quenching process is operated such that the slurry is discontinued once the coke reaches the temperature of approximately 600 degrees F because, at this temperature, the oil is less likely to volatilize and is primarily incorporated into the coke. (The coke product then continues to be quenched with water.) While the oil adds energy value, too much oil causes the coke product to actually lose economic value. Not only does too much oil make the coke difficult to handle, it also increases the Volatile Combustible Material (VCM) level, one of the product specifications for petroleum coke. If the VCM is too high, the marketability of the coke decreases.[7]

The Agency solicited further information from industry to demonstrate the recovery efficiency of the oil contained in the hazardous secondary materials used in the quenching process. EPA believes that a comparison of the recovery efficiency of the quenching process to the recovery efficiency of the conventional coking process (of the resids) would provide some indication of how ''production-related'' the use of the hazardous secondary materials in the quenching process is (i.e., the more similar the quenching process is to the conventional coking process in the recovery of hydrocarbon values, the more it may be considered analogous to, or a component of, the coking process). The data supplied indicate that the recovery efficiency of oil contained in the secondary materials during the quenching process is comparable to the recovery efficiency from the feedstock side of the coking operation.[8] Thus, although the oil content in the hazardous secondary materials is markedly less, at the very least, there is demonstrated hydrocarbon recovery from the secondary materials used in the quenching process, which is consistent with the overall production intent of petroleum refining.

The Agency notes that one major point of contention between those commenters opposed to the exclusion and those supporting the exclusion is whether there is actual evidence that oil (or hydrocarbon value) is recovered during the quenching process. As stated previously, the oil content of the oil-bearing hazardous secondary materials typically used in the quenching process varies considerably (8 to 40 percent), although the typical secondary materials have an oil content around 10 percent.[9] In determining the oil recovery efficiency of the quenching process (i.e., a quantification of how much of the oil contained in the secondary materials is

[6] The AMC I court gave this provision a restrictive reading, stating (somewhat circularly) that is applied only to material that had already become a hazardous waste (824 F. 2d at 1188.) However, given the holding of AMC II that wastewater treatment residuals can be classified as solid wastes and that wastewater treatment operations break any chain of what must be regarded as a continuous industrial process, the wastewater treatment sludges destined for the quenching process could be classified as being hazardous wastes.

[7] See the September 3, 1997, letter from Kyle Isakower to William Brandes and the January 23, 1998, letter from Paul Bailey to Michael Shapiro.

[8] See January 23, 1998, letter from Paul Bailey to Michael Shapiro.

[9] See the September 3, 1997, letter from Kyle Isakower to Max Diaz and the January 9, 1998, letter from Richard Fortuna to Michael Shapiro.

actually volatilized and recovered for further refining versus how much oil is simply incorporated into the coke product), EPA encountered difficulty in getting any actual data. The data the Agency primarily relied on were derived from surrogate tests (i.e., tests designed to simulate the conditions the secondary materials encounter during the quenching process) performed on the secondary materials typically used in the quenching process.[10] This is because coking operations (particularly the capture and condensing of the light-end hydrocarbons) do not avail themselves to the type of quantifiable measurements that the Agency prefers. Regarding the quenching process, this is even more the case. However, surrogate tests may actually be more representative of the oil recovered from secondary materials used in the quenching process than actual measurements taken during the quenching process. This is because any measurement of the amount of oil recovered during the quenching process would also likely include the light ends that remain entrained within the coke product from the conventional coking operation (i.e., light-ends derived from the resids feedstock) which are typically recovered during the quenching process in a manner analogous to steam stripping.

One of the critical factors in estimating the oil recovery efficiency of the quenching process is the specific gravity of the oil contained in the hazardous secondary materials. The lighter the oil fractions, the more oil will volatilize during the quenching process. Here, too, there was disagreement among commenters over how the oil contained in the secondary materials should be characterized. One commenter stated that since crude oils have grown steadily heavier (i.e., contain a larger percentage of higher molecular weight, higher boiling point hydrocarbons) over time, a trend that is only expected to continue, the oil contained in the secondary materials, especially the wastewater treatment sludges, would be disproportionately heavy and thus would be less and less likely to volatilize during the quenching process. This was supported by data (gathered from listed hazardous wastes sent to RCRA-permitted facilities) demonstrating the heavy-to-light ratio for oil contained in the wastes.[11] In response, the petroleum industry stated that the oil contained in the secondary materials (particularly wastewater treatment sludges) comes from oil that has been through some refining, and thus the trend towards heavier crude oils will not have a corresponding effect on the oil contained in the secondary materials. Also, industry claims that the actual data used to support the assertion that the oil contained in the secondary materials is predominantly heavy is not representative of the secondary materials used in the quenching process because, prior to sending such materials to a permitted facility for proper treatment and disposal, a refinery will typically use other processes (e.g., centrifuging) to aggressively extract as much oil (and water to reduce the volume of material sent for treatment and disposal) as possible from the materials, more so than would be the case if these materials are to be used in the quenching process. The oil recovered by these more aggressive recovery processes would tend to be the lighter oils, leaving a disproportionate amount of heavy oil in the materials analyzed.[12]

Based on a considered evaluation of these conflicting comments, and using engineering and technical judgement in lieu of data actually demonstrating the recovery of hydrocarbon values from the secondary materials used in the quenching process, the Agency believes that oil (i.e., hydrocarbon value) is recovered during the quenching process and that the efficiency of this recovery is comparable to the recovery of light-ends during the conventional coking process. (The Agency also notes that in the worst case scenario provided by one commenter opposed to the exclusion, which assumed 80 percent of the oil in the secondary material was too heavy to significantly volatilize at the temperatures encountered during the quenching process, there was recovery of hydrocarbon, even from the heavy oil fraction.[13])

Effect of Using Hazardous Secondary Materials in the Quenching Process on the Coke Product

A further consideration, in spite of the hydrocarbon recovery and contribution of energy value to the coke product, is whether the use of the hazardous secondary materials in the quenching process actually provides some beneficial contribution to the coke, or whether it may degrade the coke product. Commenters opposed to allowing the use of hazardous secondary materials in the quenching process raised two main concerns regarding the effect on the coke product. First, these commenters claim that the use of hazardous secondary materials in the quenching process contributes nothing beneficial to the coke product. These commenters dismiss the notion that the oil contained in the secondary materials used in the quenching process contributes energy value by stating that any energy value that may be gained is more than negated by the additional ash content that is also introduced to the coke product (thus, there is no net benefit to the product and instead a net degradation of the product).[14] Furthermore, as at least one commenter noted, the ability for the coke produced using the hazardous secondary materials in the quenching process to continue to meet product specifications could simply be an indication that the specifications for this low-value fuel product provide a great deal of flexibility, rather than demonstrating that the product is not adversely affected. Thus, the product specifications themselves would allow for a certain amount of non-contributing hazardous secondary materials to be added to the coke product.[15]

The second concern raised regarding the effect of the secondary materials on the coke product is that the coke product demonstrates no significant change in concentration of hazardous constituents due to the simple dilution that occurs when a relatively small amount of hazardous secondary material is mixed with a much larger volume of coke product (approximately 100 barrels, or about 20 tons of hazardous secondary materials are used in the quenching of 700–800 tons of coke product). Simply stated, the lead and chromium in the secondary materials are being diluted by combination with the much larger volume of coke product containing low levels of lead and chromium. Since these metals are not volatilized during the quenching process, they must remain in the coke product. Commenters point to the insertion of lead and chromium (which serve no purpose in the coke product) as evidence that the use of hazardous secondary materials in the quenching process is simply disposal of hazardous constituents. Such disposition of unwanted and unneeded hazardous constituents, often termed ''toxics along for the ride,'' is a prime indicia that sham recycling can be occurring (depending largely on the extent of contamination, as well as other case-

[10] See January 23, 1998, letter from Paul Bailey to Michael Shapiro.

[11] See the January 9, 1998, letter from Richard Fortuna to Michael Shapiro.

[12] See the February 2, 1998, letter from John Medley to Max Diaz.

[13] See the January 9, 1998, letter from Richard Fortuna to Mike Shapiro.

[14] See the January 9, 1998, letter from Richard Fortuna to Mike Shapiro.

[15] See the January 9, 1998, letter from Richard Fortuna to Mike Shapiro.

specific facts) (see *U.S.* v. *Marine Shale Processors,* 81 F.3d 1361, 1366 (5th Cir. 1996)).

In evaluating the first concern, i.e., whether the use of oil-bearing secondary materials in the quenching process provides a beneficial contribution to the coke product or process, the Agency notes that the main purpose of the petroleum coking unit is to recover hydrocarbons from the oil contained in the feedstocks for further refining. Similarly, the main purpose of using the secondary materials in the quenching process is the energy-efficient recovery of hydrocarbon from the residual oil in the oil-bearing secondary materials. Concerning the issue of net contribution to the coke product (i.e., added energy value versus added ash content), the petroleum industry maintains that the additional ash content is insignificant and points to the amount of coke product produced per cycle (ranging from about 400 to 800 tons) that would be endangered if the ash content (as well as the VCM level) contributed during the quenching process was sufficient to lower the value or marketability of the coke product.[16] In answer to the concern that the product specifications for petroleum coke are too flexible to use as an indication that the coke is unaffected by the hazardous secondary materials, the Agency notes that coke product produced using hazardous secondary materials in the quenching process is basically similar to coke produced without using secondary materials in the quenching process. Further, EPA notes that the quenching process can and does produce anode-grade coke, the most high-valued coke with the most stringent product coke specifications.[17]

In considering the second concern, i.e., whether the fact that the coke product produced using secondary materials in the quenching process continues to meet the product specifications (and, in fact, demonstrates little change in the levels of contaminants compared with coke produced without hazardous secondary materials) is simply a result of dilution, the Agency acknowledges that such dilution does occur. However, there are several other considerations. As stated earlier, the primary product of the petroleum coking process is the hydrocarbon fraction recovered for use as feedstock in the production of high-value fuel products, with the coke product being a co-product of the coking process. The Agency is convinced that such recovery occurs when oil-bearing secondary materials are used in the quenching process. Given that the recovered hydrocarbon is the primary product of using the secondary materials in the quenching process, the simple fact that the coke product (i.e., the co-product) continues to meet the applicable product specifications and shows no appreciable increase in risk carries more weight in the Agency's evaluation. In other words, demonstrating hydrocarbon recovery is the key test in determining whether the hazardous secondary materials actually serve a useful role in the overall coking operation, rather than demonstrating a net contribution to the coke (as opposed to no degradation of the coke). Acknowledging that there is a potential for some degradation of the coke product, depending on the constituent make-up of the particular secondary materials used in the quenching process, the Agency believes that the product specifications, and the economic consequences if those specifications are not met, will serve to limit the use of the quenching process to secondary materials that will not cause the coke to exceed its specifications, and effectively limits the allowable insertion of metals and excess high boiling point hydrocarbons. However, in cases where there is sufficient degradation of the product (or co-product) such that it no longer meets product specifications or otherwise becomes unmarketable, the Agency would question the legitimacy of using the secondary materials in the quenching process. Similarly, if there were sharply decreased efficiency of hydrocarbon recovery stemming from the use of the hazardous secondary materials in the quenching process (recovery rates of, for example, less than 50 percent of the oil contained in the secondary materials, rather than the minimum 70 percent efficiency EPA believes occurs), the Agency would question the legitimacy of the activity. (The Agency knows of no such cases at present.)

Taken all together, the fact that (1) the recovery efficiency of hydrocarbons from oil contained in the secondary materials used in the quenching process is comparable to the recovery efficiency of the conventional coking process, (2) the use of oil-bearing hazardous secondary materials (including RCRA listed hazardous wastes) in the quenching process is consistent with the overall goal of the petroleum refining industry, namely to maximize the recovery of hydrocarbon values from the original crude oil feedstocks (and thus is akin to ongoing processing), (3) the oil cannot be recovered from these secondary materials by any other process customarily utilized in petroleum refining, and (4) the coke product continues to meet product specifications and indicates no increase in risk, the Agency concludes that the use of oil-bearing hazardous secondary materials generated by the refinery industry can legitimately be used in the coke quenching process, dependent upon whether there is both hydrocarbon recovery and no adverse effect on the coke product.

Regulatory Status of the Quenching Process

Having determined that certain oil-bearing hazardous secondary materials can be legitimately used in the quenching process, the question then becomes whether this activity constitutes ongoing production and hence is excludable, or, rather that it is legitimate hazardous waste recycling—potentially subject to regulation as a form of hazardous waste treatment. There are several factors that could lead to either outcome. As stated earlier, there is recovery of hydrocarbon values from the oil-bearing secondary materials, short- and middle-chain fractions that are condensed and sent to refining processes to produce high-value fuel products (consistent with the overall coking operation). In addition, there is some beneficial contribution to the coke product in the form of carbon and higher energy values (even though this may not be reflected by an actual increase in market value), and the Agency also notes that the coke product continues to meet the market-driven specifications for the product, even for high-value anode grade coke. In addition, as with other sidestreams generated by one process and used as feedstocks to other production processes, this activity constitutes a link in the multi-step chain of processing steps designed to recover as much of the hydrocarbon value from the original crude oil feedstock as possible. Thus, there are aspects of this activity that lead one to conclude that the oil-bearing hazardous secondary materials used in the quenching process can be considered, for regulatory purposes, as part of an ongoing production process and hence classified as an activity not subject to RCRA jurisdiction.

There are, however, several factors that were raised in comments to argue that using the hazardous secondary materials in the quenching process is a form of waste management, e.g.,

[16] See the September 3, 1997, letter from Kyle Isakower to William Brandes and the January 23, 1998, letter from Paul Bailey to Michael Shapiro.

[17] See the September 3, 1997, letter from Kyle Isakower to William Brandes.

legitimate hazardous waste recycling. The oil-bearing secondary materials are not typical of normal feedstocks to any other refining process. Typical feedstock streams are very high in oil content (i.e., primarily oil), while these secondary materials contain a range of oil concentrations that is consistently much lower than typical feedstocks (thus resulting in a much smaller amount of oil being recovered, albeit at an efficiency comparable to conventional coking, as discussed above).

There are numerous statements, both written and verbal, found within the industry's internal descriptions of the use of hazardous secondary materials in the quenching process, that depict this activity as an efficient means of disposing of RCRA hazardous wastes.[18] There is also anecdotal evidence of a refinery with a coker charging another refinery without a coker to take such oil-bearing hazardous secondary materials which are then used in the quenching process, analogous to tipping fees or charges that a hazardous waste recycling facility would receive from a generator in return for a waste management activity. These issues are some of the reasons EPA felt it was not compelled by statute to exclude these wastes as ongoing manufacturing, and that this is a decision for EPA's discretion.

In considering both viewpoints, the Agency has decided that use of hazardous secondary materials in the quenching process warrants an exclusion from the definition of solid waste (always assuming that the particular practice is legitimate recycling). In the Agency's view, the primary purpose of this activity is the recovery of the remaining hydrocarbon values in the oil-bearing secondary materials (with the addition of carbon and energy value to the co-product coke), utilizing the existing heat energy contained in the coke product after the conventional coking process. The assertion, by commenters opposed to this activity that it is questionable that the component in the secondary material that fulfills its primary purpose (i.e., oil) could also be a limitation on the use of the secondary material (i.e., that too much oil would degrade the coke product itself) is not compelling. It is not uncommon for industrial processes to have specifications on a feedstock material that require a minimum of a certain component while at the same time requiring that a maximum level for the same component not be exceeded because it would degrade the quality of the product. EPA also believes that the lead and chromium in the secondary materials should decline with time. This is due to overall reductions in the use of these metals throughout the refinery (e.g., leaded gasoline is no longer produced on a wide scale and chromium-based water treatment chemicals are no longer used in industrial cooling towers, as a result of Clean Air Act requirements; see 40 CFR Part 63, Subpart Q). Thus, with the exception of lead and chromium (which are expected to decrease due to process changes), the hazardous metals found in the hazardous secondary materials can be traced back to the metals found in the original crude oil feedstock and so do not represent contaminants introduced through means other than the continued processing of the initial raw material feedstocks. EPA's traditional concern regarding unnecessary hazardous constituents being processed and ending up in a product is mitigated in this case because the Agency views this activity more as the continual processing of a raw material that contains hazardous constituents, with concentrations of these constituents found in the feedstock streams to various refining processes varying dependent on the point in the overall production process. In the context of a multi-step production process, there is much less of an element of discard of the hazardous constituents inherent in the original raw material than there would be had these secondary materials been generated by another industry or had the hazardous constituents not been inherent to the original raw material.

EPA also has no evidence that the quenching process could be viewed as part of the waste management problem, part of the jurisdictional tests articulated in AMC I and II. As discussed earlier, there is no significant evidence of degradation of coke product quality, and indeed, coke produced with and without using secondary materials in the quenching process are largely indistinguishable from the standpoint of concentrations of hazardous constituents.[19] Finally, again, EPA believes that the recovery of hydrocarbon from the oil-bearing secondary materials in the quenching process is consistent with the overall petroleum refining process the coking operation in particular, i.e., the recovery of hydrocarbons for the production of high-value fuel products. This goal, in turn, is consistent with the RCRA objective to encourage safe types of recycling (see RCRA section 1003(a)(6)). Therefore, the Agency is providing a conditional exclusion for oil-bearing hazardous secondary materials that are inserted into the coker, based on the assumption that, whether inserted along with normal feedstock (i.e., resids) or used in the quenching process, hydrocarbons are recovered for further refining and there is no degradation of the coke product.

Conditions for the Exclusion

As stated at proposal (60 FR at 57754–57755), the exclusion applicable to oil-bearing hazardous secondary materials destined for insertion into the petroleum refinery, including the coker (and the quenching process), is conditioned on there being no land placement and no speculative accumulation, ensuring that these oil-bearing hazardous secondary materials do not become part of the waste disposal problem. EPA reiterates its belief, presented in the proposal, that the management of these secondary materials prior to insertion into the refinery will not pose a risk to human health and the environment, and that the American National Standard Institute (ANSI) standards for the design, construction, operation, maintenance, and inspection of petroleum terminal and tank facilities are sufficient to ensure that such materials will be managed in an environmentally protective manner. The Agency also notes that the exclusion being promulgated today is only for those oil-bearing hazardous secondary materials that are actually used in a refining process, including the quenching process of a petroleum coker. Hazardous secondary materials that are released and not immediately recovered and used in a refining process would not be excluded, and thus would be subject to Subtitle C regulation as hazardous wastes that have been disposed.[20]

The Agency is also requiring that the materials excluded under this provision of today's rule be returned directly to a refinery for insertion. While this is not an issue if materials are recycled onsite, EPA has concerns (as did some commenters) about situations where these materials are generated at one refinery for insertion into another, but are not directly sent and instead are sent to an intermediate non-refinery facility for processing. EPA does not think it

[18] See the January 9, 1998, letter from Richard Fortuna to Mike Shapiro.

[19] See the January 23, 1998, letter from Paul Bailey to Michael Shapiro.

[20] The Agency notes that today's rulemaking is not intended to affect the applicability of existing regulatory exclusions in § 261.2(c)(2) and (3) regarding the reclamation of off-specification or spilled commercial chemical products listed in § 261.33, or that otherwise exhibit a hazardous characteristic (50 FR 14219; April 11, 1985).

unreasonable to assume that these materials should either be located at the generating refinery, at the receiving refinery, or are otherwise in transit between the two; this is consistent with the underlying argument that this is ongoing production within the petroleum refining sector.

The Agency is maintaining the condition that only those oil-bearing secondary materials that result in a coke product that does not exhibit a characteristic of hazardous waste be subject to the exclusion. This condition mirrors the statutory provision stating that petroleum coke produced from petroleum industry hazardous wastes is not subject to Subtitle C regulation provided the coke does not exhibit a characteristic of hazardous waste (see RCRA section 3004(q)(2)(A)). This condition (coupled with the industry's own product specifications) will serve to ensure that the coke product does not degrade such that the secondary materials used in producing the coke will become a part of the waste disposal problem. As a result of this condition and the fact that this exclusion is limited to refinery wastes, today's exclusion in § 261.4(a)(12) supersedes the existing exemption in § 261.6(a)(3)(v); therefore, the regulations are being amended to remove § 261.6(a)(3)(v).

The Agency considered, as suggested in several comments, setting a minimum oil content to define the scope of ''oil-bearing secondary materials'' that are excluded when used in the quenching process, or to require a demonstration of hydrocarbons actually being recovered from the excluded secondary materials that is comparable to oil recovery in the conventional coking process. The Agency rejected limiting the exclusion based on a set minimum oil content or a recovery efficiency requirement for several reasons. As discussed above, the quenching process represents the final, and last possible process in which to recover hydrocarbon from the original crude oil feedstock. The refinery processes and operating procedures are designed to separate and process into products as much hydrocarbon as possible from the crude oil feedstock; in other words, to prevent as much oil from making its way into these secondary materials as possible. The oil that does make its way into these secondary materials is generally considered unavoidable and inevitable, or, in some cases, too much oil in these secondary materials is evidence of a problem with some aspect of the overall refining process (which helps to explain the wide range of oil contents in these materials). Thus, it would be counter to the overall efficiency of the petroleum refining process to require a minimum oil content in the secondary materials. Conversely, the Agency believes it is fundamental to this exclusion that there actually be oil recovered for further refining when these oil-bearing hazardous secondary materials are used in the quenching process. To the extent there is no recovery, or drastically inefficient recovery, the operation could be a type of sham recycling, as discussed earlier.

Also, the Agency believes that, in this case, a minimum oil content condition would do little to ensure that only those secondary materials from which oil can actually be recovered would be excluded; in other words, the Agency does not believe that setting a minimum oil content would ensure that secondary materials are legitimately being used in the quenching process. Since most of the secondary materials in question result from wastewater treatment, a minimum oil content requirement would only serve to encourage a refinery to operate the refinery wastewater treatment process less efficiently to ensure that these secondary materials contain the minimum oil content and thus avail themselves of an exclusion.

As for requiring a demonstration of oil recovery efficiency comparable to the conventional coking process, the Agency concluded that the normal operating practices and conditions (e.g., temperature) inherent to the quenching process will result in a comparable oil recovery efficiency. While there may be fluctuations in the actual volume of oil recovered (due to the fluctuations in the oil content of the secondary materials as well as the ratio of heavy-to-light oil in the secondary materials), the quenching process, when properly operated, is such that there will be oil recovered from oil-bearing hazardous secondary materials due to the high temperatures inherent in the process. Therefore, requiring an actual demonstration of recovery efficiency would be unnecessarily burdensome unless there is a question regarding a site-specific coke quenching process or the hazardous secondary materials being used. Therefore, the exclusion for refinery-generated, oil-bearing hazardous secondary materials being legitimately recycled into the petroleum refining process, including in the coke-quenching process, is conditioned only on these materials being managed such that there is no land placement and no speculative accumulation, and that the coke product produced not exhibit a characteristic of hazardous waste.

Materials Subject to the Exclusion

At proposal, the Agency proposed to exclude oil-bearing hazardous secondary materials that are generated within the broad petroleum industry (covering SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172—which comprise petroleum refining, marketing, transportation, exploration, and production) and inserted in the petroleum refining process, including in the coker. As discussed earlier in today's preamble, the exclusion being promulgated today is limited to only those oil-bearing hazardous secondary materials that are generated within the petroleum refining sector (SIC code 2911). To conform with this limitation, EPA is retaining (with some clarification) the existing exclusion for recovered oil from the broader petroleum industry. (EPA is also excluding petrochemical recovered oil from certain petrochemical facilities, which is a related but different exclusion discussed elsewhere in today's rule.) In the context of oil-bearing hazardous secondary materials being used in the quenching process, limiting the exclusion to the petroleum refining sector is entirely consistent with the information evaluated in making this determination (i.e., data representing the materials currently used in the quenching process, namely F037, F038, and K048–K052). As discussed above, the exclusion for oil-bearing hazardous secondary materials used in the quenching process was not made on a strict jurisdictional basis. The types of secondary materials, their constituent components, and the fact that the coke product remains basically unchanged when such secondary materials are used were all factors in EPA's determination. The fact that the Agency only evaluated oil-bearing secondary materials that were generated by the refining sector in its determination is sufficient reason to limit the exclusion to refinery-generated secondary materials.

However, a further reason relates to the concept that oil-bearing secondary materials that are generated by the refining process and continue to be processed in the coker (by use in the quenching process) is more akin to an ongoing production process than would be the case for secondary materials generated outside the refining sector of the petroleum industry. The Agency maintains that the quenching process is an ancillary activity that is somewhat removed from the overall production process; however, the fact that the secondary materials are generated and

used in another production process (i.e., the overall coking operation) within the same industry, imparts a closer association with the concept of an ongoing production process (see AMC I) than would be the case for secondary materials generated by a different industrial sector. The Agency has no information on which to base a finding that the use of oil-bearing hazardous secondary materials originating in a non-refinery sector of the petroleum industry in the coke quenching process would be anything other than the management of wastes (e.g., hazardous waste recycling) from that non-refinery sector.

In one sense, the exclusion for recovered oil (as opposed to ''oil-bearing secondary materials''), which spans the scope of the broad petroleum industry, reflects the Agency's assessment that only those hazardous secondary materials that are comparable to normal feedstocks (i.e., oil) used in typical production processes should be excluded from RCRA without attention to how they are processed. Oil-bearing secondary materials (as opposed to ''recovered oil'') originating from a non-refinery sector have the potential to be more waste-like (i.e., they are not clearly ''oil'' and also may contain types or quantities of toxic constituents that have not been evaluated, especially if their ultimate use is in the quenching process) and thus do not warrant an exclusion. Therefore, the Agency is today promulgating an exclusion for (1) secondary materials that are similar to normal refining feedstocks, even if generated by a non-refinery petroleum industry sector (i.e., recovered oil) and (2) secondary materials that are both generated by and used in any refinery production process, including the coking operation (i.e., refinery-generated oil-bearing hazardous secondary materials).

The Agency notes, however, that non-refinery generated oil-bearing secondary materials that are used in the quenching process (i.e., hazardous wastes) may nevertheless be legitimately recycled by use in the quenching process, depending on there being oil recovered during the quenching process and no adverse impact on the coke product. The oil recovered during the coking operation (including both conventional coking and the quenching process) is excluded from the definition of solid waste under 40 CFR 261.4(a)(12). The coke product produced from such hazardous wastes, however, would be subject to hazardous waste fuel regulations. This does not represent a change from current requirements, because the current regulatory exemption for coke produced using hazardous waste (superseded by today's exclusion for refinery waste being recycled) does not apply to coke produced using anything but refinery-generated waste.

Status of Residuals from Processing or Recycling Excluded Oil-Bearing Secondary Materials

EPA received comments stating that the proposed rule did not clarify the status of residuals generated from the processing and recycling of excluded oil-bearing hazardous secondary materials.[21] Specifically, certain oil-bearing hazardous secondary materials generated at petroleum refineries are listed hazardous wastes if they are discarded instead of recycled as described in today's rule. However, the Agency is aware that these materials may be processed in various ways prior to insertion into the petroleum refinery, depending upon the nature of the oil-bearing material and the intended point of insertion into the refinery. Some of these processing steps may result in residuals that are not suitable for insertion, again based upon the choices available to the refinery. If these residuals are to be discarded, they are clearly solid wastes and would not retain their original hazardous waste listing because of the exclusion. The hazardous waste characteristics may or may not capture these materials, and therefore they could be disposed of outside the Subtitle C system. The Agency then became concerned about situations where, for example, a listed waste was generated and only minimally processed to recover oil for insertion into the refining process, leaving behind a largely unchanged residual that was to be discarded but was no longer defined as listed waste. The Agency agreed that this was a potential problem with the exclusion, and a subsequent request for comment letter was sent to interested parties on October 1, 1997. EPA requested comment on whether the interested parties viewed this situation as a potential loophole, and what, if anything, might be done to remedy it. Responses to EPA's request were somewhat mixed. Some commenters did not believe the loophole was a realistic construction of the effect of the exclusion, while others agreed that it was indeed problematic and needed to be addressed. After reviewing the information submitted by commenters, the Agency has decided that it would be an undesirable outcome if listed wastes were only marginally processed, generating residuals that were not recycled and escaped regulation. Therefore, the Agency has slightly modified the existing hazardous waste listing description in 40 CFR 261.31 for the F037 waste, to include in the listing description any residuals generated from recycling or processing oil-bearing secondary materials that (1) would have otherwise met a listing description when originally generated, and (2) are disposed of or intended for disposal.

2. Recovered Oil From Associated Petrochemical Facilities

It is logical that the Agency evaluate the integrated nature of petroleum refining and petrochemical manufacturing to further identify oil-bearing materials that can be permissibly classified as part of ''ongoing manufacturing'' within the petroleum industry, and that are not part of the waste disposal problem. In proposing the exclusion for oil-bearing materials from petrochemical operations which are returned to refining, the Agency had two important considerations. The first consideration was to encourage the recovery of a valuable resource and reduce regulatory uncertainties in cases where oil from petrochemical facilities is returned to petroleum refineries, specifically in situations where the refineries generally provide the raw materials (refinery products) to the organic chemical manufacturing facilities. The second was to consider whether or not these hydrocarbon streams have accumulated toxic constituents through the various chemical manufacturing processes, constituents that have no value to the petroleum refinery, are different from the constituents typically encountered in a petroleum refinery, and may be inadequately managed through this activity. Given the large and complex nature of the organic chemical manufacturing industry, this was not a straightforward undertaking. Accordingly, the Agency proceeded cautiously, engaging in discussions with representatives from both the chemical manufacturing and petroleum refining industries.[22] As discussed at proposal, the Agency agreed with industry arguments indicating that because significant volumes of materials composed almost exclusively of oil from petrochemical facilities are being directed to various petroleum refining processes, careful controls were in place

[21] Comment PRLP–0054, ARCO Products Company.

[22] April 7, 1995, and July 31, 1995, letters to Steven Silverman (EPA Office of General Counsel) and September 13, 1995 letter to Becky Daiss, from Michael W. Steinberg (Morgan, Lewis & Bockius).

as a result of concerns about operational upsets and product quality. (See 60 FR at 57756). For example, representatives from the petroleum industry have stated that they have significant concerns about the presence of organic chlorides in their process units due to damage from corrosivity. In addition, comments submitted by the chemical manufacturing industry describe ''feedstock quality management programs,'' whereby the quality of petrochemical recovered oil is routinely evaluated and its contribution to refinery product performance determines its acceptability and value. One commenter, an organic chemical manufacturer, stated that due to the critical nature of refinery finished product specifications, all sources of hydrocarbons to a petroleum refinery are assessed to ensure their suitability. This ''suitability'' of petrochemical recovered oil is assessed either through process knowledge or periodic analyses of certain characteristics, including water and solids content, gum-forming compounds, and metals. As the Agency has noted elsewhere in today's rule, the petroleum refining process can be described as a process of separating valuable product materials from the contaminants inherent in the original feedstock, crude oil. Based on comments submitted by the organic chemical manufacturing facilities that supply these hydrocarbon streams to refineries, refinery operators cannot simply assume that certain contaminants will be separated from hydrocarbon feedstocks (crude oil or petrochemical recovered oil) during the refining process without potentially causing equipment fouling, corrosion, or problems with product quality. Further, due to the integration between some refineries and organic chemical manufacturers, there is a shared stake in avoiding costly shutdowns, operational upsets, or other situations that might compromise the overall safety and profitability of the combined facilities. It is from this perspective that EPA began reviewing information indicating that recovered oil from organic chemical manufacturing facilities was acceptable to the refinery as a substitute for crude oil.

The Agency acknowledged in the proposed rule that this potential exclusion was based on a ''very limited set of data'' (see 60 FR at 57756). At proposal, EPA was interested largely in how petrochemical recovered oil compared to refinery recovered oil, in terms of the parameters that would indicate suitability of the material for refining (e.g., specific gravity; distillation temperature range; flash point; hydrocarbon type; and sulfur, ash, and total chlorine/halogen content). EPA also was interested in comparisons to the used oil specification, in part because EPA has used the used oil specification in a previous rulemaking as a surrogate for product fuel oil. Although EPA recognizes (and two commenters independently agreed) that there are shortcomings in using the used oil specification in the context of analyzing petrochemical recovered oil (largely because of the purposes for which the used oil specification was derived) the specifications for metals and halogens are a partial surrogate for crude oil content. The Agency also considered comparing the composition of the petrochemical recovered oil to ''comparable fuel specifications'' currently being developed as part of a separate Agency effort to define specifications which would indicate when a secondary material would pose no greater risk when burned than a fossil fuel, and therefore might be defined as products, not wastes (see proposed rule at 61 FR at 17460, April 19, 1996). However, comparing the petrochemical recovered oil halogen data to the comparable fuel specification did not seem appropriate because the petrochemical recovered oil is not being burned as a fuel, but is instead being inserted into a complex series of fuel manufacturing processes (i.e., petroleum refining), where contaminants are removed and hydrocarbons are converted into various fuel products.

In response to EPA's request in the proposed rule, data was received during the comment period on samples of various hydrocarbon streams from organic chemical manufacturing facilities (SIC code 2869) and non-organic chemical manufacturing units (representing SIC codes 2821, 2822, 2865) located at these same facilities. EPA also received some data representing other non co-located, intercompany chemical manufacturing facilities. The organic chemical manufacturing data (representing SIC code 2869) indicate that in comparison to refinery recovered oil, the petrochemical stream was similar, and in some aspects, ''better'' than the refinery sample (i.e., the petrochemical recovered oil was a ''narrower cut'' requiring less refining, thus preferable to a refiner). When comparing the submitted data representing SIC code 2869, as well as a sample of refinery recovered oil, to the used oil specification, both samples were well within the specification (with the exception of flashpoint, which is not a concern here). Regarding total halogens, the highest concentration reported in a sample of petrochemical recovered oil was 3,400 ppm (parts per million) total chlorine. Irrespective of where this number fell with regard to the used oil specification for total halogens (at 1000 ppm EPA presumes mixing of used oil with hazardous waste has occurred; 4000 ppm is an upper limit for burning used oil without being subject to certain requirements; see 40 CFR 279.11), the Agency was concerned about the possible source(s) of the halogens in the petrochemical recovered oil. Information submitted along with this data indicates that chlorine could be introduced in small amounts to petrochemical recovered oil due to the use of chloride-based catalysts. Subsequent comments clarified that the use of seawater as a ''seal'' in the petrochemical facility's oil/water separation system was the source of the chloride in that particular sample. The commenter indicated that although the use of seawater as a seal or barrier in the separation tank results in some salt entering the recovered oil phase, because this particular hydrocarbon stream is sent to a co-located petroleum refinery to be managed along with crude oil, the chlorides are removed in the same process that removes chlorides typically found in crude oil (i.e., the desalter unit).[23]

In summary, in the analytical data submitted in response to the proposed rule, certain patterns in the composition of petrochemical recovered oil were evident, including a similarity in composition to refinery recovered oil being used as feedstock by the refinery.

Limitation on Petrochemical Recovered Oil

As mentioned earlier, part of the evaluation of whether or not these recovered oils from petrochemical facilities are part of an ongoing manufacturing process within the petroleum industry, and whether the operation can be viewed as part of the waste disposal problem, includes whether or not these materials contain toxic constituents not normally present in typical refinery feedstocks and intermediates. One concern that the Agency has is the possibility that certain hazardous wastes, particularly wastes containing halogens, may end up in the petrochemical recovered oils either through inadvertent or intentional mixing (i.e., ''adulteration'').

[23] December 29, 1997, and January 22, 1998, letters to David Bussard (EPA Office of Solid Waste) from Ronald Shipley (Chemical Manufacturers Association).

Specifically, there are many secondary materials that the EPA has explicitly listed as hazardous (e.g., K-wastes at 40 CFR Part 261, Subpart D, under ''Organic Chemical Industry''). Many of these wastes are highly-halogenated residuals, and EPA studied each of these waste streams at the time they were listed and determined that their management is easily capable of posing significant risks unless done properly (viz. with exceeding care, such as is specified in the Subtitle C regulatory standards). EPA believes that these listed wastes are clearly distinct from the petrochemical recovered oils discussed here, and based on the information EPA has received on the recovered oils sent to refineries, these listed wastes are not recycled in this manner. To ensure that this ''adulteration'' of the petrochemical recovered oils (by mixing listed hazardous wastes) would be prohibited under today's final rule, EPA is limiting the petrochemical recovered oil exclusion to those recovered oils that are hazardous only because they exhibit the characteristic of ignitability (as defined in 40 CFR 261.21) and/or toxicity for benzene (40 CFR 261.24, waste code D018). EPA believes that petroleum refineries are able to handle hydrocarbons that are ignitable and contain benzene, given the types of materials that are routinely managed at these facilities; also, based on the information EPA has received on these materials, these are likely the only characteristics that would classify these petrochemical recovered oils as hazardous.

Co-Located and Common Ownership

EPA proposed that the exclusion for petrochemical recovered oil apply only where the organic chemical manufacturing facility is ''associated'' with the petroleum refinery, either by being physically co-located or under common ownership. As mentioned previously, this was partly due to the limited data the Agency had, but also because EPA believed that the degree of integration between a petrochemical facility and a petroleum refinery that occurs in co-located and/or co-owned situations helped ensure more familiarity with each other's manufacturing processes, composition of products and intermediates, and administrative procedures. These attributes go beyond the strict commercial relationship that is more typical of transactions between buyers and sellers of various secondary materials, by-products, and intermediates. However, the Agency has not been able to develop a definition of ''common ownership'' that would be clear and workable for such purposes. As part of EPA's continuing efforts to redefine solid waste, defining common ownership (as a possible means of describing certain intracompany transfers) also has been explored and has proven very difficult. This is largely because of the many complex ways in which ''ownership'' can be defined from both a financial and a legal perspective. EPA believes that to attempt to do so here would not prove effective. However, EPA does believe that the concept of ''co-located'' is more or less understandable and reflects physical boundaries as well as a degree of integration that would help ensure more control by each facility over the transfer of materials throughout the combined facility. ''Co-located'' in today's rule means that the petroleum refinery and the organic chemical manufacturing facility are physically adjacent to one another, or otherwise share a common boundary. In situations where the facilities consider themselves co-located but they are not physically adjacent nor do they share a common boundary, the Agency is further clarifying co-located to include facilities that have a high degree of integration with one another, as evidenced by things such as shared wastewater treatment systems; shared manufacturing units; transfer of materials via dedicated piping; environmental permits that cover both facilities; facilities that share common emergency response equipment, procedures, and planning; etc. These examples can be typical of physically co-located facilities, and therefore can be used to clarify cases where for one reason or another an integrated petrochemical and petroleum refinery do not actually share a common boundary. Also, to better define the relationship and degree of integration between a petroleum refinery and the co-located petrochemical facility, the Agency is including in the definition of ''associated organic chemical manufacturing facility'' in § 261.4(a)(18) the condition that the petroleum refinery that is receiving recovered oil from a co-located petrochemical facility also provides the hydrocarbon feedstocks to the same co-located petrochemical facility.

Other SIC Codes

In the proposed rule, EPA stated that it would consider broadening the proposed exclusion to include hydrocarbon streams from certain other chemical manufacturing facilities, including plastic materials and resins (SIC code 2821), synthetic rubber (SIC code 2822), and cyclic crude and intermediate producers (SIC code 2865), if sufficient analytical data were received to support such a broadening. Much of the data that the Agency received on recovered oil from these other SIC codes actually represented recovered oil from process units that are located at petrochemical facilities whose primary classification is under SIC code 2869. In other words, many of the organic chemical manufacturing facilities can be described as vertically integrated, where process units classified under several SIC codes operate in an integrated fashion. For example, an organic chemical manufacturing unit under SIC code 2869 may produce intermediates that are then fed to a unit classified under SIC code 2821. Both units may produce hydrocarbon side streams that represent unreacted feedstock or other hydrocarbon by-products (consisting almost entirely of oil), which are typically commingled and sent to a co-located petroleum refinery for refining along with crude oil. (Of the three co-located petrochemical facilities for which the Agency received data on recovered oil, only one of them was engaged in operations classified solely under SIC code 2869; the other two facilities had units or activities from the other SIC codes as well). The Agency reviewed analytical data on recovered oils from specific process units representing SIC codes 2821, 2822, and 2865, and found these to be comparable to refinery recovered oil.

Because the recovered oil from process units classified under the SIC codes 2821, 2822, and 2865 is similar to refinery recovered oil (where these units are part of vertically-integrated organic chemical manufacturing facilities whose primary SIC code is 2869), the Agency is including these materials in the scope of today's exclusion. These materials are typically managed together and returned to the co-located petroleum refinery together. Commenters also pointed out that limiting the exclusion of recovered oil to the primary SIC code, at a complex where several SIC codes are represented (and where the hydrocarbons are similar and recycled back to the petroleum refinery together) may have a significant impact on facilities with multiple SIC codes. Commenters also argued that segregating recovered oil systems based on differing SIC codes could be prohibitively expensive and may result in a reduction in hydrocarbons returned to the refinery. The regulatory language in today's exclusion at § 261.4(a)(18) for petrochemical recovered oil will limit the exclusion to recovered oil from

associated petrochemical facilities whose ''primary'' SIC code is 2869 (organic chemical manufacturing), but may also include SIC codes 2821, 2822, and 2865.

B. Modeling Approaches and Risk Assessment

Commenters provided extensive comments on various aspects of the modeling approaches and risk assessment used in the listing determinations. Many comments on the determinations were raised repeatedly for various wastes. Therefore, EPA discusses the most important risk and modeling issues below, and more specific comments important for individual wastes are addressed in Section V.C on Residual-Specific Comments. For complete responses to comments on these and other issues, see the Response to Comment documents for comments on the proposed rule and the NODA in the docket to today's rule.

1. Sampling and Analysis of Refinery Wastes

Use of the TCLP for Oily Wastes

EPA characterized the wastes through an extensive effort of waste analysis, including analysis for constituents that leach out of the waste using the TCLP. In the TCLP, the waste is filtered to separate any liquid phase present, and the solids are then mixed with an aqueous solution in order to estimate the levels of the waste constituents that dissolve and separate into the liquid phase. The Agency's use of the TCLP as input to groundwater modeling for landfill disposal was challenged by several commenters as either underestimating or overestimating the leaching of constituents from the petroleum wastes studied, due to the oil and/or the multiple phases present in the wastes. EPA has decided that the TCLP is appropriately used in this rule to characterize the amount of hazardous constituents potentially released from landfills through aqueous leaching. As discussed below, EPA found no need to change its risk assessment because of any failure of the TCLP due to potential problems that might arise from the presence of oil in some wastes.

One commenter argued that the TCLP is very conservative because it assumes that the waste is disposed of in a municipal solid waste landfill, and disposal of potentially hazardous industrial wastes in a municipal landfill is not a likely mismanagement scenario today. The commenter also argued that the TCLP is a water phase model, not a multi-phase model (multi-phase meaning wastes with high oil content leading to release of nonaqueous as well as aqueous phases). The commenter claims that use of the TCLP to estimate risks from oil-bearing residuals (e.g., CSO and crude oil storage tank sediment) would produce overestimates of potential risks.

EPA does not agree that the TCLP overestimates leaching levels for these wastes. EPA did not assume in its quantitative risk assessment that oily liquids elute from the landfill to groundwater, because EPA's initial and subsequent analyses showed that oil in the wastes in question was unlikely to migrate from a landfill containing these wastes. Thus, EPA did not use the TCLP to predict movement of oily liquids. While the commenter is correct in stating that the TCLP procedure was designed, in part, to represent leaching from a municipal landfill, the industry reported significant volumes of residuals being disposed in precisely the type of landfill modeled by the TCLP. Specifically, EPA examined the data collected from the 3007 Questionnaire and found that, in fact, petroleum refineries reported 146 wastes that were sent to municipal landfills (see Additional Listing Support Analysis, 1998, in the docket for this rule).

Other commenters felt that the TCLP may underestimate the leachability of constituents from the refinery wastes due to high oil content. These commenters pointed to an EPA report presented in past rulemakings (e.g., the listing of F037/F038 refinery wastes, November 2, 1990, 55 FR 46376), which indicated that the TCLP may underestimate leachate concentrations because of difficulties in the TCLP procedure associated with filtering oily wastes, such that any constituents in the oily fraction in the waste are not properly evaluated. The commenters believed that EPA should use alternative procedures for oily waste, specifically the Oily Waste Extraction Procedure (OWEP) rather than the TCLP.

EPA disagrees with these comments. First, the report cited by the commenters discusses difficulties in filtering multi-phasic oily wastes (Evaluation and Modification of Method 1311 for Determining the Release Potential of Difficult-to-Filter Wastes, April 1990). Multi-phasic wastes are wastes with readily separable oil, solid, and possibly aqueous portions. EPA's lab results show that the wastes under study in this rule did not exhibit the filtration difficulties EPA has found with other, more problematic, oily wastes. The wastes studied were not multiple phases, heterogeneous, or difficult to filter. While EPA measured levels of ''total oil and grease'' (TOG) that appeared high for some wastes (e.g., up to 25 percent for crude oil storage tank sediment), the Agency stresses that the TOG method measures all extractable organic material, some of which are not likely to migrate out of the waste, such as waxes, greases, and other large molecular weight substances. The TOG method does not measure, in any sense, ''free'' oil (i.e., oil that might migrate from the waste as a separate phase). Furthermore, the EPA report cited by the commenter concluded that the TCLP method was adequate, even for some ''oily'' wastes, provided the wastes could be filtered. EPA did not encounter the types of problems described in previous listings during the present rulemaking.

Second, the Agency does not believe that the use of the OWEP method is necessarily more appropriate for the wastes under consideration. The OWEP method was designed to measure the aqueous mobility of the metals (not organics) present in wastes, and uses a strong solvent to remove the organic phase prior to leaching with the aqueous leachate used in the TCLP. This may significantly alter the original sample matrix and affect the leaching results, and the Agency recognizes that this aggressive method may not be fully representative of possible leaching from a landfill. Despite these concerns, EPA performed additional analysis of archived samples using the OWEP to fully respond to the comment by examining any differences in metals mobility between the TCLP and the OWEP. The results of this analysis were presented in the NODA. Based on the results of this analysis, EPA found that metal leachate results were similar between the two tests. Therefore, EPA concluded that oil content (as measured by TOG) does not appear to impact the mobility of metals in the wastes under study.

Commenters on the NODA OWEP analysis argued that the results showed some increase in the mobility of several metals in the wastes, and argued leachable levels of arsenic, chromium, and lead are higher in some of the OWEP samples. However, the same commenters also questioned the validity of the OWEP reanalysis because three years had elapsed between the TCLP and OWEP analyses and pointed out that the reanalysis was not useful since the detection levels were higher for the TCLP analysis.

EPA disagrees that any measurable differences, of which there were few, in the OWEP/TCLP results are dramatic or meaningful. Overall, the OWEP results are consistent with the original TCLP

data; only 14 out of 189 OWEP values were greater than the original TCLP concentrations. Moreover, 8 of the 14 higher OWEP values were associated with residuals that contained less than one percent oil and grease, thus indicating oil and grease content is not a significant factor. In fact, the variability within each waste category is greater than the variability between OWEP and TCLP results. Thus, any differences are more likely due to sample composition variability rather than the leaching technique. Furthermore, if oil content were truly interfering with the TCLP analysis, one would expect the wastes with higher oil content to show correspondingly greater leaching with the OWEP, but there is no such trend in the data (see NODA Response to Comment Document, 1998, Section I.C.1, for more detailed discussion of the OWEP data). While there are limitations in the OWEP data, the lack of any significant differences in the data sets that can be compared indicates that the use of the TCLP did not underestimate the leaching of the metals of concern.

In response to the commenters' concerns over the use of the TCLP for measuring the mobility of organics in these refinery wastes, EPA examined the analytical data for the wastes under study to see if oil content (as measured by TOG) significantly affected the leachability of a key organic constituent (benzene) and presented the results in the NODA. For the 27 samples for which the leaching efficiency of benzene could be calculated, the average efficiency was 53 percent, i.e., 53 percent of the total mass of benzene contained in the residual was extracted into the aqueous phase. This efficiency is governed by the solubility of benzene in water, as well as benzene's affinity for the specific sample matrix. In any case, while the leaching efficiency varied somewhat from sample to sample, the leaching rate was fairly consistent regardless of whether the waste contained higher or lower total oil; the average leaching efficiency for the six of the 27 samples which had TOG above 1 percent (samples of crude oil tank and CSO tank sediment) was also 53 percent.

Comments on the NODA suggested using the average leaching efficiency (53 percent) for modeling the key constituent benzene for all waste samples analyzed by EPA, regardless of the actual TCLP results for each waste. EPA disagrees with the suggestion to use the simple average TCLP leaching efficiency for all wastes studied, because this would ignore important waste-specific information. This approach would overestimate benzene levels for some waste and underestimate levels for others. Leaching results are dependent on the specific matrix, and EPA believes that the actual TCLP result is a better indicator of the potential mobility rather than an average for all wastes studied. The most important point to draw from EPA's evaluation of leaching efficiency for benzene is that these results indicate the TCLP mobility of benzene is not greatly affected by the oil content in these particular wastes.

Comments on the data presented in the NODA also argued that EPA should evaluate TCLP leaching efficiency for constituents other than benzene, in particular for polycyclic aromatic hydrocarbons (PAHs). The commenters were concerned the oil content and free oil present in some wastes (CSO and crude oil storage tank sediment) would facilitate leaching of PAHs.

EPA disagrees that these constituents, including benzene, will be more mobile due to free oil in the wastes under study, because the existing data show ''free'' oil is not present. EPA evaluated the leaching potential of benzene because this compound was found in various wastes and was a key constituent in the risk analyses due to its high toxicity and relative mobility. However, to respond to the comment, the Agency further evaluated the leaching potential of four additional constituents (xylenes, naphthalene, methyl phenol, and phenanthrene). These results indicate that there is no significant discernable trend with respect to lower leaching values associated with higher oil and grease content (see data presented in Tables 5 through 8 in the NODA Response to Comment Document, 1998, in the docket for today's notice). The constituents generally leached in similar proportions for all residual types. It is not possible to calculate extraction efficiencies for most PAHs because these constituents were generally not detected in the TCLP extract due to their very low solubility in water. In any case, EPA notes that the two wastes with the higher measured TOG and PAH levels (CSO and crude oil storage tank sediments) are being listed as hazardous waste, thus largely addressing this concern.

Co-Solvency Effects

Some commenters felt that the TCLP is inappropriate because it measures only the movement of contaminants that are dissolved in the liquid TCLP phase into the groundwater, and thus fails to consider the ''co-solvency'' effects of oil and other compounds in the landfill. Such effects, they argue, would facilitate release and transport of constituents beyond that predicted by the TCLP, because of organic phases separating from wastes. The commenters offered no way to account for this in the modeling, but indicated this would increase risks.

While the commenters' concerns are theoretically possible, EPA has no evidence that the co-solvency effect is significant in this case. To respond to the potential for co-solvency effects due to disposal of oily waste in landfills, EPA examined the only available data that provides any detailed characterization of potentially co-disposed wastes-data from the 3007 Questionnaire for the refinery wastes under study. Thus, EPA examined the TOG data available from the 3007 Questionnaire for the refinery wastes that were reported to go to landfills. As presented in the NODA, this analysis showed that few wastes with higher TOG levels (i.e., >10 percent) were sent to landfills; of the 168 wastes with TOG data, only 14 had reported TOG levels at 10 percent or above.

Comments on the NODA analysis argued that the data set was limited because most samples landfilled did not have TOG data, especially those that would have higher oil content (e.g., crude oil tank sediment). Further, commenters noted that some of the larger volumes sent to landfills had significant TOG levels.

EPA disagrees. While the data set is limited, the data available clearly indicate that refinery wastes with relatively high oil content are not typically sent to landfills. In response to the comment that larger volumes sent to landfills had significant TOG levels, EPA estimated volume-weighted average TOG levels for the wastes with TOG data that were sent to on-site and off-site nonhazardous landfills, and found that these values were relatively low, i.e., less than 1 percent for on-site landfills and about 3 percent for off-site landfills. These weighted averages represent the TOG if all of these wastes were sent to the same hypothetical on-site or off-site landfill. EPA notes that this analysis of wastes sent to landfills did not consider the impact due to listing the wastes with the highest oil content (i.e., CSO and crude oil storage tank sediments) as hazardous under RCRA. After listing, neither waste can go to such a landfill and would no longer contribute to any purported co-solvency effects. Finally, as discussed above in response to comments on the TCLP method, even those wastes with higher TOG levels did not contain observable amounts of free oil, which might cause co-solvency. Therefore, EPA believes that co-solvency effects

due to oil content of the wastes under study are not likely to be significant.

One commenter also argued that other compounds in wastes other than those under study may lead to co-solvency effects in landfills and provided specific refinery examples of codisposal of individual waste streams in 1992 and Toxic Release Inventory (TRI) data to show potential co-solvency effects.

EPA disagrees with the commenter's approach to using the TRI database to calculate co-solvency effects at refineries. First, EPA notes that the TRI reporting form specifies that ''quantities reported on the form should . . . *not* reflect the total quantity of waste or constituents of the waste that are not subject to reporting requirements.'' In other words, the reported quantities are the mass loadings of the chemical components in land-disposed wastes and do not reflect the total quantity of the waste itself. Since these chemicals were managed in on-site Subtitle D landfills, they must have been components of wastes that did not exceed the TC criteria, i.e., in the part per billion (ppb) range. The ppb concentration range was confirmed by dividing the TRI loadings by the total waste quantity disposed in the on-site units identified by the commenter in 1992 as reported in the 3007 Questionnaire. Therefore, since these ''solvent-type'' chemicals would be only a very small component of the waste, their co-solvency properties would be insignificant.

Laboratory and Field Methods

Two commenters claimed that EPA's lab and field methods were deficient. Specifically, they believed that EPA violated basic sampling protocols by allowing samples to air dry prior to collection. The commenter specifically pointed out examples of CSO sediment with lower volatile organic levels than in other samples and examples of unleaded tank sediment with lower benzene concentrations than in other samples. Based on these flaws, both the total and leachable levels of volatile organics (e.g., benzene) were underestimated by EPA, according to the commenter. One commenter also argued that, by compositing samples, EPA may have lost substantial amounts of volatile compounds and that the background document does not reveal whether careful procedures were followed.

The commenter misunderstood EPA's sampling descriptions which described the refineries' practices of air drying of storage tanks generating the cited wastes. This is a standard operating procedure designed to comply with basic occupational safety practices, so that refinery personnel can enter tanks for cleaning and inspection. In no case did EPA allow for additional air drying. EPA believes that the samples are representative of residuals generated throughout the industry. In response to the commenter's comparison of detected benzene levels among three gasoline tank samples, the Agency's entire sampling data set demonstrates a wide concentration range for several wastes. EPA maintains that this variability is normal, and the Agency is neither surprised nor concerned with the range of benzene levels detected in the waste samples mentioned by the commenter. Finally, concerning the low levels of benzene in the CSO samples, EPA disagrees with the commenter that benzene levels vary significantly across these samples. Data in the proposed rule background documents show that benzene was only detected in one of four samples at a level near the quantification limit. The levels in the other three samples were below the quantification limit. This means that the benzene levels were very low (at or below the quantification level), and thus the data do not in any sense show that there is significant variability.

Field compositing procedures, when necessary, were performed for the non-volatile analytes only. EPA did not composite samples for volatile analyses, because the act of mixing the samples may lead to loss of volatiles by evaporation. The sampling and analysis protocols used were consistent with EPA's analytical guidance and were documented in Sampling and Analysis Plans. Careful procedures were followed in sampling conducted for volatile analyses and loss of volatiles was minimized.

The commenters also felt that EPA did not correctly sample CSO sediment or HF alkylation sludge. The commenters stated that the practice of mixing CSO sediment with cement kiln dust (CKD) prior to sampling misrepresented the liquid content of the CSO sediment and EPA should not have dewatered HF alkylation sludges.

In response, EPA notes that it collected samples of such wastes that were available after tank cleanout, and in this specific case, it had been mixed with CKD. This was done by the facility prior to landfilling of the waste. While this treatment may have altered some properties of this sample, the oil content (16 percent TOG) was relatively low, compared to the other three samples of CSO sediment collected by EPA (see Table 3.1.18 in the Listing Background Document, 1995). Even if the Agency discounted entirely the analytical results for the one sample mixed with CKD, it would not impact the risk assessment significantly, because this would only raise average levels of some critical PAHs slightly (approximately 10–20 percent). In any case, EPA is listing this waste, so inclusion of this sample had no material impact on EPA's final decision.

HF alkylation sludge dewatering is conducted routinely by refineries, and EPA collected most samples following this step. In this case EPA believes this waste form reflects the way the waste is disposed in landfills. EPA did take one sample of HF alkylation sludge directly from the neutralization tank and dewatered it in the laboratory to better simulate the characteristics of the waste as it would actually be generated.

2. Waste Management Assumptions

EPA described how the Agency selected waste management scenarios for risk analysis in the proposed rule, and requested comments on its choice of plausible management scenarios. Some commenters wrote to support the common sense approach the Agency used in basing listing determinations on plausible management practices. These commenters stated EPA's decisions were based on current management practices and believed EPA obtained accurate and relevant data on the residuals and management practices through site visits and the 3007 Questionnaire. However, two other commenters suggested the Agency should evaluate risks from other waste management practices. These practices included waste management in surface impoundments, use as on-site cover for landfill or LTUs, use as road bed material, and storage in a pile.

EPA does not agree that these other management practices merit further modeling. As EPA stated in the proposed rule, while some of these practices were reported for several different wastes, they typically involved small volumes or very few generators, and are not expected to present significant risk. The information collected by EPA shows that the vast majority of the waste volume that was disposed on the land went to landfills and LTUs, and the Agency focused its modeling efforts on these scenarios.

The commenter specifically cited management of several wastes in surface impoundments (spent caustic, HF alkylation sludge, off-specification product and fines). However, EPA does not believe these are significant as described in the sections on individual wastes (Section V.C). In general, surface impoundments at refineries are an integral part of the wastewater treatment

system, and EPA did not typically evaluate this system in detail for the reasons noted in the proposed rule. Briefly, risks from such treatment are unlikely to be of concern because: (1) treatment is already regulated under the National Pollutant Discharge Elimination System (NPDES) and air programs; (2) primary sludges generated from wastewater treatment are already regulated as hazardous waste (K048, K051, F037, F038); (3) volumes of the discharged residuals under evaluation are relatively small in comparison to the volumes typically treated; (4) the wastewater treatment systems are designed to treat refinery wastes effectively. Furthermore, in some cases units receiving the waste were not, in fact, surface impoundments, but tanks (e.g., HF alkylation sludges), or other concrete-lined units used as part of refinery processes (e.g., coke drilling pads for off-specification product and fines). See Section V.C for the specific wastes in question for further discussion, and Section V.D on the headworks exemption for other analyses related to wastewater treatment systems.

Two commenters argued that the use of crude oil tank sediment and CSO tank sediment as landfill cover or on-site road material should be evaluated. One commenter stated that EPA's own preliminary assessments for uncovered landfills show that use of these wastes as a landfill cover or for on-site road material poses high cancer risks for subsistence farmers and home gardeners and high risks from mercury exposure for subsistence fishers. Finally, according to the commenter, it is incorrect to assume that EPA's modeling of LTUs would account for risks posed by road spreading or other uses constituting disposal.

The Agency disagrees that these scenarios were not adequately considered, and the Agency does not believe that they would present significant risk. These practices were exceedingly rare, e.g., the one refinery which managed its crude oil tank sediment as ''cover for on-site landfill'' in 1992 no longer uses that landfill. In addition, the risks for crude oil tank sediment cited by the commenter were based on bounding levels, and resulted from a preliminary screening analysis designed to overestimate possible risks for landfills. Such bounding estimates use worst-case assumptions for all sensitive parameters to screen out exposures of little concern, and to identify what pathways require further analysis. Furthermore, the apparent risks in the bounding analysis were based on incorrect biotransfer factors (used in beef, dairy, and plant indirect paths), which EPA has since determined to overestimate worst-case risks by at least two orders of magnitude. Likewise, the apparent problem from mercury was also traced to an error in units for the bioaccumulation factor used and when corrected mercury does not present any significant risk in these wastes. Thus, EPA believes that the bounding analysis was flawed and grossly overestimated risks. Similarly for CSO sediment, EPA also notes that only two refineries reported using CSO sediment in road bed material in 1992. EPA believes that the modeled land treatment conditions are conservative surrogates for road spreading because: (1) The volumes and areas assessed for land treatment greatly exceed the reported road spread volumes and areas, (2) road spreading usually involves mixing with gravel, asphalt, dirt, etc., thereby diluting toxicants below that represented by the wastes modeled for land treatment and reducing risk; and (3) road spreading creates a stable road base, which is compacted and then covered by additional fill, aggregate, or pavement, making material less apt to wash away, erode, leach, or enter non-groundwater pathways than material managed by land treatment. Finally, the issue is moot because the two wastes specifically cited by the commenters (crude oil and CSO tank sediments) are being listed, thereby preventing these rare practices in any case.

One commenter stated that the Agency did not properly evaluate the storage of wastes such as off-specification products and fines (i.e., coke-derived fines) in piles. The Agency's response to this issue is given in Section V.C for the specific waste in question. EPA evaluated each waste being studied to determine whether waste was being generated frequently enough to pose a potentially significant risk, and if so, whether it was appropriate to model interim storage (e.g., tanks, containers, piles). In most cases, the exposure risks of most concern are associated with long-term final disposal, and short-term storage was not judged to pose significant potential risk. Many residuals are generated infrequently, e.g., sediments from tanks are cleaned out about every 10 years. EPA did model interim storage of certain wastes that were generated more frequently when appropriate (i.e., spent caustic, sulfur complex sludge).

Two commenters stated that by modeling management practices and volumes based only on what occurred at the time of EPA's survey in 1992, EPA substantially understated risk and does not reflect the potential for waste management volumes and practices that may occur in the future. They argued the modeled volumes and practices are ''forever fixed'' and merely reflect a snapshot in time.

EPA does not agree that the volumes and practices used in modeling understate risks. Based on the economic factors affecting the refining industry and practices observed during the Agency's field investigation, 1992 was a typical year for refinery operations. As described in the annual report issued by the Department of Energy (DOE/EIA Petroleum Supply Annual 1992, Volume 1; May 1993), in 1992, the national economy was not in extremis, capacity rates were high, and plant closings and openings were within normal ranges. Furthermore, the DOE report for 1995 shows economic and production trends for crude oil and petroleum products. While prices for petroleum products and crude oil varied from 1985 to 1995, no unusual spikes or dips occurred during this time, and product production remained fairly constant over this time period.

In addition, EPA reviewed API's Generation and Management of Residual Materials, 1992–1993 Appendix C, which provides trends of waste generation from 1987–1993. In general, 1992 was representative when comparing waste generation and management for the API waste categories and the residuals under review. Only hydroprocessing catalysts showed a slight increase in production that year possibly due to the new low-sulfur diesel regulations. In developing reasonable management scenarios for subsequent risk assessment modeling, EPA considered some potential shifts in management practices. These considerations are discussed in the context of each specific waste (see Section V.C). For the remaining residuals, EPA considered the industry to be stable, and thus assumed that 1992 provided a reasonable picture of the petroleum refining industry's practices. EPA's approach was not ''forever fixed'', but used 1992 as a reasonable starting place for assessing the industry's waste generation and management practices.

Finally, EPA notes that its survey of refineries was a complete census of the industry, and gathered information from all active petroleum refineries in the United States. It is reasonable for the Agency to conclude that the large amount of information gathered in its 1992 survey of petroleum refineries related to waste generation, management, and disposal practices is representative of such practices in any year. While individual refineries may change practices in any given year, the overall pattern of these practices,

including waste volumes and the potential environmental risks posed, are unlikely to change significantly for the industry as a whole. Therefore, EPA has no reason to believe that 1992 was not a representative year.

The commenter also stated that waste volumes modeled in the NODA risk assessment were inappropriate because the individual waste volumes modeled for land treatment were typically much smaller than modeled for landfilling, even though there is no legal or technical bar for the wastes to be managed in either fashion during any given year. The fact that refineries relied upon land treatment less in 1992 is not necessarily indicative of future practices.

In response to the commenter's concern regarding the transferability of wastes between land treatment and landfilling, EPA notes that a refinery may choose different disposal practices based on a variety of considerations, two of which are particularly important. First, the refinery must consider the waste's characteristics. Wastes with higher liquid content are more likely to be land treated due to the moisture requirements of the land treatment process, while dewatered wastes are more likely to be landfilled due to cost and waste volume constraints (e.g., more waste costs more), and liquid content. This is supported by the data collected in the 3007 Questionnaire, which show that wastes sent to land treatment contain on average higher TOG and water than wastes sent to landfills. The average oil and water content reported for landfilled wastes were 5.9 percent and 7.5 percent respectively, compared to average oil and water levels of 14 percent and 17 percent for land treated wastes. The second important consideration regarding the transferability of wastes between landfills and LTUs is availability of the two disposal methods for each refinery. Certainly, on-site Subtitle D LTUs are rather limited and may not be available to many refineries. As described in information EPA provided in the NODA, EPA's database showed only one facility with both on-site nonhazardous landfill and nonhazardous LTUs (see Supplemental Background Document-Listing Support Analysis, April 1997 in the docket, p. 15) and only six nonhazardous LTUs for all refineries (ibid., p. 30). Thus, to project that large volumes of waste would shift between landfills and LTUs appears implausible. Finally, assuming for the sake of argument that such shifts did occur, it is possible that any change in waste management practice for one refinery would be offset by the opposite change by another refinery, in effect balancing out any changes from year to year.

3. Codisposal of Wastes

Two commenters noted that the waste volumes do not reflect either the actual or potential for codisposal of wastes (i.e., disposal of two or more wastes in the same unit). Such codisposal of the wastes is found in several instances in EPA's database for on-site and off-site units receiving these wastes. The commenters argued that codisposal would increase risks for the individual wastes evaluated by EPA, because the greater volumes would release more toxic constituents. The commenters noted that EPA found waste volume to be an important parameter, especially in the groundwater model.

In response to these comments EPA first notes that its modeling for the proposed rule and NODA did, in fact, combine volumes in cases where the same landfill accepted multiple portions of the same waste stream for disposal. Thus, volumes of the same residual sent to the same landfill were aggregated and placed into the waste volume distribution for use in modeling. In response to this comment, however, EPA expanded its analysis in the NODA to include codisposal of all 14 residuals examined for this listing determination that were landfilled, as well as another set of 15 refinery wastes that were under study. This analysis excluded only (1) wastes that were proposed for listing, because they could no longer be placed in a nonhazardous landfill (spent hydrotreating and hydrorefining catalysts), and (2) any wastes that were not landfilled at all (e.g., spent caustic). EPA combined the waste constituent and TCLP data for individual wastes by weighing the concentrations determined for each waste according to the volume of the wastes used. Thus, volume weighted waste and TCLP concentrations were used to construct a hypothetical scenario of all these wastes being in one generic on-site or off-site landfill. The codisposal analysis showed risks below 1E–5, which EPA does not view as significant. Revising this assessment to reflect the changes in the off-site landfill scenario as described elsewhere in this Section, the high-end risks were 8E–6, and remain below 1E–5 (see Table IV–2).

However, comments on the NODA argued this analysis was flawed, because EPA used only median volumes for each waste, and did not undertake a full sensitivity analysis for the high-end risk analysis. In response, EPA notes that the NODA also presented a Monte Carlo analysis of the codisposal scenario, which used the full volume distribution for these wastes, not just the median volumes, and even at the 99th percentile, the Monte Carlo risk was below 1E–5. After revising the input parameters and Monte Carlo assumptions for off-site landfills as described earlier in this Section, the Monte Carlo risks remain low (3E–6 at the 95th percentile; see Table IV–2).

Commenters also argued that EPA's codisposal approach did not consider codisposal with other refinery wastes in landfills that are not under examination by EPA in the listing determination or the study. One commenter submitted analysis that attempted to account for the on-site codisposal of the wastes under study by increasing the combined waste volume to include on-site landfill volumes reported in the 3007 Questionnaire. The commenter also assumed that each waste was sent to the same landfill for 40 years. These assumptions resulted in an increase of about 5-fold in the total volumes modeled. However, the commenter noted merely increasing this volume alone did not significantly increase risks for the codisposal scenario. The commenter went on to assume that the codisposed wastes (i.e., the wastes that were not part of EPA's current listing determination or study) would contain sufficient benzene to leach at one-half the TC (i.e., 0.25 mg/L). The commenter's analysis also made other changes to EPA's modeling assumptions, including assuming all wastes leach benzene with an efficiency of 53 percent, and that the receptor well is located on the centerline of the plume of contamination (see discussion later in this Section on groundwater issues). With these further set of assumptions, the commenter estimated high-end risks up to 4E–5.

EPA does not find the commenter's codisposal analysis compelling for several reasons. First, the assumption that the codisposed wastes will all leach at one-half the TC level is speculative and without foundation. In fact, the existing data available to EPA for the refinery wastes under study show that very few of these wastes contain such high levels of benzene. EPA has no valid reason to project that benzene levels in other codisposed wastes would be drastically different, as assumed by the commenter. Also, EPA does not agree with other modeling assumptions used by the commenter, and the Agency has arrived at a different conclusion in its modified risk analysis. As noted later in this Section, EPA believes the commenter's assumption about well location and landfill active life are incorrect. (EPA used a 30-year life and

treated well location as one of the variable parameters). EPA's revised high-end and Monte Carlo analyses did not change significantly (see Table IV–2), even when using the larger volume inputs. This is consistent with the commenter's initial results, as noted above. Furthermore, EPA notes that the final listing decisions would tend to lower any codisposal risk, because of EPA's final listing of two other wastes as hazardous, crude oil, and CSO tank sediment. Both contributed leachable benzene to the codisposal analysis performed by EPA (and the commenter), thus with these wastes removed from any possible codisposal with the remaining wastes, any risks from codisposal should be lower than estimated with them included.

Finally, EPA questions how relevant such a codisposal analysis would be, even if it could be done to the commenter's satisfaction. EPA is not attempting to list landfills that may contain a variety of wastes, but rather the Agency is trying to determine whether an individual waste merits listing, based on the incremental risk posed by a specific waste. To properly factor in all wastes that are in each landfill would require extensive site-specific information that would be essentially impossible to gather, and would require speculation about what wastes would be sent to a disposal unit and how long disposal of such wastes would occur. This could create an analysis difficult to interpret for use in listing determinations. In any case, this is not necessary to protect human health and the environment, because EPA's analysis shows the risks from codisposal are below levels of concern.

EPA also evaluated the impact of codisposal on the risks from land treatment of the wastes under study, and provided this analysis in the NODA. Constructing a hypothetical LTU that contains all of the wastes so managed is unnecessary, given the very limited number of nonhazardous units that are available for land treatment. Of the 172 refineries in the 3007 Questionnaire, only 13 nonhazardous units were reported to receive any of the residuals of concern (6 on-site and up to 7 off-site LTUs). The risks from land treatment of individual wastes were dependent on the PAH content in the waste, thus the waste with high PAH content, CSO sediment, yielded significant risks when evaluated by itself. As shown in the land treatment risk analysis in the NODA, none of the other wastes when evaluated individually had risks approaching 1E–6. EPA found only one on-site LTU and three off-site LTUs that received more than one waste under study in 1992 containing any PAHs of concern. Because of the limited codisposal found in LTUs, EPA examined the potential risks from the actual disposal reported, assuming that wastes proposed for listing (most notably CSO tank sediment) were removed. Because few other wastes had appreciable PAH content, the codisposal analysis yielded negligible risk. Crude oil storage tank sediment was included in the codisposal analysis, however, EPA has since decided to list this waste. Therefore, removing this waste, which contains moderate levels of PAHs, from any codisposal analysis would further reduce the likelihood that codisposal of the unlisted wastes in LTUs will yield significant risk.

4. Impact of Hazardous Characteristic Regulations

Wastes Exceeding the TC

Some commenters stated that the risk assessment in the proposed rule overstates the risks from benzene and arsenic (the key constituents of concern for the wastes proposed for listing) because EPA included benzene and arsenic TCLP concentrations in excess of the TC limit for these compounds. The commenters suggested that EPA should calculate groundwater risks from Subtitle D landfill disposal of crude oil tank sediments and spent hydrotreating/hydrorefining catalysts by using only the data that does not exceed the TC limit. Commenters noted that EPA's risk assessment assumed that no RCRA Subtitle C controls were in place for any of the management scenarios; therefore, including any waste samples that exhibited the TC (i.e., for benzene) in the risk assessment would lead to unrealistically high risk.

To respond to the commenter's concerns, the Agency presented further analysis in the NODA resulting from groundwater modeling runs in which the input TCLP data for wastes that exceeded the TC threshold were ''capped'' at the TC level. Thus, EPA used the assumption that wastes could contain toxic constituents at or near the TC threshold, and that such data should be included in the risk assessment. EPA notes that the groundwater risk analysis in the proposed rule, as well as in subsequent analyses, did not include waste volumes reported in the 3007 Questionnaire to be hazardous and sent to hazardous waste Subtitle C landfills in the volume distributions used in modeling risks from nonhazardous Subtitle D landfills. EPA believes this is reasonable because these volumes were handled as hazardous and would not affect risks from Subtitle D units. This point is discussed further in the following section in the context of comments on volumes used in modeling LTUs.

The final revised groundwater analyses (see Table IV–2) showed some reduction in risks, using the TC-capping assumptions. However in all cases the high-end risks for these TC-capped runs exceeded the 1E–5 risk level for both benzene and arsenic. The 95th percentile Monte Carlo risks also exceeded 1E–5 for one key constituent (arsenic) for the spent hydrotreating and hydrorefining catalysts analysis. The TC-capping has essentially no effect on groundwater risks from arsenic in these catalysts, and the modeling results for these specific wastes are discussed in more detail below and in Section V.C.3.

Two commenters responded to the Agency's analysis on the capping of waste concentrations at the TC levels by arguing that EPA's ''cap'' was too high, and provided alternative methods that would result in lower input values for benzene and arsenic for the spent hydrotreating and hydrorefining catalyst wastes. EPA had capped the average TCLP input data for the high-end analysis at the TC level, while the commenters suggested capping each individual sample before averaging. The commenters noted that EPA's Monte Carlo analysis used the original TCLP data and substituted the TC threshold for individual values that exceeded the TC. Using the approach applied by EPA in the Monte Carlo analysis, the commenters calculated that the average TCLP concentrations decreased to 60 percent of the TC level used in the high-end analysis.

The Agency believes that its approach is more appropriate for the conservative high-end risk analysis, but notes that the Monte Carlo analysis, effectively, does what the commenter suggests. The Agency performed the TC-capped analysis to assess the level of risk that might occur, assuming wastes that exceed the TC threshold are managed as hazardous wastes. Therefore, EPA believes that capping the actual input to the high-end model is appropriately conservative. As discussed in detail in the discussions for specific residuals (see Section V.C), the Agency believes that even the Monte Carlo TC-capping analyses support listing these wastes.

For the catalysts, EPA notes that using this alternative approach in the high-end analysis is unlikely to affect the listing decision because: (1) the pyrophoricity of the wastes supports listing these wastes, (2) the arsenic risks would remain very high under either TC-capping approach, and (3) the high-

end risks for benzene remain of concern. To explain the second point, EPA notes that the TC-capping has no effect on hydrotreating catalyst because none of the samples exceed the TC level for arsenic. For hydrorefining catalysts, which did have some values above the TC level, even if the lower average arsenic input levels assumed by the commenters were used, the arsenic risks would remain above 1E–4. (Note that the risk results are not very sensitive to the TCLP input level for arsenic under the conditions modeled, because this chemical moves very slowly in groundwater, causing the maximum receptor well concentration to be relatively insensitive to the starting leaching concentration.)

Another commenter objected to capping waste samples at the TC level, particularly for benzene, arguing that this implies the toxicity characteristic may be an appropriate alternative to listing the wastes. The commenter stated the TC-capped modeling and the underlying implications are wrong because (1) the TCLP is unreliable for oily wastes, (2) a generator may apply ''knowledge'' in lieu of testing, (3) generators may render inaccurate determinations, and (4) the characteristic does not consider the high PAH content of some wastes.

EPA generally agrees that for the wastes at issue, crude oil tank sediment and spent hydrotreating/hydrorefining catalysts, the TC does not provide sufficient regulatory control for the various reasons stated in the residual specific discussions in Sections V.C. As shown by the TC-capped modeling analysis, the risk levels remain at levels of concern, whether or not EPA assumes wastes exceeding the TC levels would be managed as hazardous. Furthermore, as discussed later in this section on the use of the TC as an alternative to listing, EPA believes that listing these wastes is supported by other factors.

EPA does not agree with the commenter's claim that the TCLP is unreliable for the wastes evaluated in today's rule (see discussion at the beginning of Section V.B.1). While EPA agrees that inaccurate determinations by generators may occur due to the difficulties associated with sampling some wastes (see discussion in Section V.C.1), the Agency believes that the use of a generator's knowledge in lieu of testing is appropriate in many cases. Finally, the Agency agrees that, to the extent potential risks from PAHs are not controlled by the TC, wastes should be listed. This may occur because PAHs are not TC constituents, as noted in the following section on use of the TC as an alternative to listing. Therefore, if a particular waste exceeds TC levels only some of the time, any PAH risks would not be adequately covered for those instances where the waste does not exceed the TC levels.

Eliminating Hazardous Waste Volumes

In allocating volume inputs for the groundwater and nongroundwater modeling, EPA omitted waste volumes that were reported to be hazardous (i.e., exhibited a characteristic defined in 40 CFR 261.24). EPA had not done this in the proposal for wastes sent to land treatment, and for inadvertently modeled hazardous waste volumes that were, in fact, disposed of in permitted hazardous waste LTUs. EPA corrected this in the risk analysis for land treatment presented in the NODA. One commenter disagreed with EPA's approach of not counting waste volumes managed as hazardous in 1992, and noted this dramatically reduced the high-end volumes of crude oil storage tank sediment used as input to the NODA risk assessment for land treatment disposal. The commenter stated that the ''recalculations'' for land treatment volumes are based on the unverified assumption that because certain wastes were managed in 1992 as hazardous, they will always be managed as hazardous. The commenter argued that by excluding these wastes, EPA is implicitly relying on the existing TC in lieu of listing the waste, and therefore making the same policy errors as the landfill TC-capping modeling (discussed above).

EPA does not agree with this comment. The wastes that were excluded for the revised land treatment modeling were, in fact, reported to be hazardous in the 3007 Questionnaire. While some wastes may exhibit a characteristic sometimes, and not at others, EPA has no reason to believe that 1992 was not a typical year. Thus, EPA could reasonably assume that similar amounts would be hazardous from year to year, and such variation should not lead to significant changes in the risk analysis. While excluding these volumes does rely on the TC as the commenter noted, this reliance seems justified because these wastes did, in fact, exhibit the TC and were reported to be managed as hazardous. Furthermore, EPA notes that the waste of primary concern to the commenter, crude oil tank sediment, is being listed as hazardous in any case due to groundwater risks from landfill disposal. For the other wastes modeled in LTUs, removal of volumes regulated as hazardous did not alter the risk results significantly, i.e., the median and 90th percentile volumes were only slightly different (see Table 2.1 in the NODA nongroundwater risk assessment background document, Supplemental Background Document; Nongroundwater Pathway Risk Assessment, March, 1997).

Use of the TC as an Alternative to Listing

Some commenters indicated that the use of the TC adequately regulates potential risks, and therefore, makes listing of the refining process residuals unnecessary. Others commented that the TC does not adequately capture wastes that should be regulated, and supported the proposed listings.

In response, the Agency notes that its listing decisions are based on a weight-of-evidence approach, which evaluates various factors, including the results of the risk analysis. In general, EPA may consider listing wastes that frequently exhibit a characteristic if risks are not adequately controlled by the characteristic. The TC, for example, was based on an evaluation of potential threats constituents may present if released to groundwater (see 55 FR 46369; November 2, 1990). Thus, for a waste that is TC hazardous, EPA may consider listing if other pathways besides groundwater present a risk, if other constituents in the waste are not included in the list of TC constituents, or if a waste with levels of TC constituents below characteristic thresholds still shows significant risk for some situations.

In today's rule, EPA is finalizing listings for the two spent catalysts and crude oil tank sediment, even though these wastes are often characteristically hazardous, because risks from landfilling these wastes are not adequately controlled by the TC (see specific waste discussions). Furthermore, EPA is listing another waste, CSO tank sediment, that often exhibits the TC characteristic for benzene, because the TC does not effectively control risks presented by PAHs in LTUs via nongroundwater pathways. The TC was developed to provide protection against potential risks from the contamination of groundwater by leachate from land disposal units, and was not designed for nongroundwater pathways. In addition, PAHs are not on the list of TC constituents.

5. Other General Risk Issues

Consistency With Past Listings

One commenter stated that EPA's methodology for the current listing determination is inconsistent with previous Agency practice and policy,

specifically with the finalized carbamates listing and the previous petroleum listing. The commenter noted that, for the carbamates listing rule (February 9, 1995; 60 FR 7825), EPA computed landfill waste volumes according to the quantity of wastes that could be landfilled, not just the quantity that happened to be landfilled in the reporting year. The commenter provided examples in the current listing proposal where waste volumes for land treatment exceeded the volumes for landfilling, and argued that the volumes used in the landfilling assessment were therefore too small. The commenter also noted that EPA considered the codisposal of solvents and other oily wastes in petroleum refining waste management units as part of its 1990 listing determination for refinery wastewater treatment sludges, F037/F038 (November 2, 1990; 55 FR 46354).

As a general response, EPA notes that the commenter did not take into consideration the evolving nature of the Agency's risk assessment process and policies. EPA's risk methodologies have progressed over the years, and the modeling tools have been refined. The earlier rule cited by the commenter, the listing decision for treatment sludges (F037/38), did not, in fact, rely on modeling, but rather used a more simplistic approach based on a comparison of waste constituent concentrations to health-based levels. Given the modeling tools currently available, EPA no longer believes such an approach is appropriate, because it does not take into account the potential for waste constituents to be released from the waste units, their fate and transport in environmental media, and the levels to which receptors may ultimately be exposed. In today's rule, EPA has used various models to estimate the release and transport of the toxic chemicals of concern, and the Agency believes such an approach is more useful in projecting the potential risk to exposed individuals.

While EPA did perform modeling as part of its risk assessment in the carbamates listing cited by the commenter, this was essentially the first time the Agency attempted to use such modeling to support listing decisions. Thus, EPA made various simplifying assumptions. For example, EPA created a hypothetical off-site landfill for modeling by assuming that all of the carbamate wastes under examination would be placed in the same off-site unit. Such a simplifying assumption would be unrealistic in the current rulemaking, given that the petroleum refining industry consisted of 185 facilities in 1992, and that these facilities were widely distributed throughout the country (for comparison, the carbamates industry comprised 23 facilities). To use the same approach as was used in the carbamates rule, i.e., to assume disposal of all wastes in one landfill, does not appear reasonable in the current rulemaking.

Therefore, EPA believes that the approach used in today's rule is a reasonable progression of EPA policy. For responses to the specific comments related to the use of volumes reported for land treatment and landfills, see the discussion on Waste Management Assumptions, which appears earlier in this section. Elsewhere in this rule EPA also responds to comments related to codisposal (Section V.B.3) and co-solvency (Section V.B.1).

The commenters also argued that previous listing determinations were based on lower levels of contaminant concentrations than those found in wastes being considered in this notice, and that the wastes under consideration in this rulemaking should be listed. For example, the commenter pointed out that the average total concentration of benzene and PAHs, such as benzo(a)pyrene found in crude oil tank sediment exceeds the level of benzene in F037 and F038 that caused those wastes to be listed in 1990.

EPA recognizes that crude oil tank sediment and other residuals characterized in this listing determination may contain concentrations of some constituents comparable to previously listed wastes, including the F037 and F038 refinery residuals. However, direct comparison of these concentrations to previous listing benchmarks is not an adequate basis for listing. Listing determinations consider many factors beyond the concentrations of constituents in a waste, including the waste volume, constituent mobility, management practices, damage cases, other regulatory controls, etc. (see 40 CFR 261.11(a)(3)). As noted above, the listing of F037/F038 sludges did not use modeling for support, but instead relied on constituent concentrations, as well as various other factors. The other factors that EPA relied on in this listing included the very large volumes of F037/F038 generated (over 400,000 metric tons per year), the widespread use of surface impoundments to manage the wastes, and damage cases. Therefore, merely comparing constituent levels may not provide a useful measure of what wastes should be listed. Furthermore, as noted above, EPA's risk assessment process has evolved, and the Agency has developed a more sophisticated set of risk assessment tools than were available for listing determinations in 1990. As a result, EPA believes that it is better able to measure and predict risk now than previously, and that the better procedures and methodologies should be used.

Individual Versus Population Risk

Several commenters stated that the population risks estimated by EPA do not justify a decision to regulate the wastes proposed for listing (hydrotreating and hydrorefining and clarified slurry oil sediment), and that consideration of the risks posed by these landfills to the entire population potentially exposed would lead to the conclusion that these residuals do not pose substantial hazards to human health, and thus, should not be listed as hazardous wastes. Commenters argued that EPA's failure to give serious consideration to the low levels of population risk is at odds with the statute, the listing criteria, and regulatory precedent within the federal government. The commenters claimed that, due to the low populations risks, EPA cannot conclude that any of these residuals ''is capable of posing a substantial present or potential hazard to human health or the environment,'' as required in 40 CFR 261.11, and should not list any of these residuals.

In response, EPA notes that ''population risk'' is not explicitly used in either the RCRA statute or the hazardous waste listing regulations in 40 CFR 261.11. EPA does not believe it is appropriate to allow contamination from waste management units to cause substantial risk to nearby residents simply because there are few wells in the immediate area. In addition, the regulation cited by the commenter clearly states that wastes are to be listed if they are ''capable of posing a substantial present or potential hazard'' (emphasis added). Thus, the Agency must protect against potential, as well as present risks that may arise. The Agency's decision to list these wastes is based primarily on the concern over risks to those individuals who are significantly exposed, even if there are relatively few of them.

Population risk is only one of many factors to be considered in Agency decisions, and there are numerous precedents where the Agency has taken action, for example at Superfund sites and in previous listing determinations, when there are relatively few people potentially affected. See, for example, the report entitled Land and Soil Health Risks from CERCLA (Federal Superfund), and WQARF (State Superfund) Sites, Arizona Department

of Environmental Quality, 1995, in the docket for today's rule, which concluded that population risks were low because the number of people exposed to groundwater contamination is small. The Agency has stated that the key objective of the CERCLA National Contingency Plan (NCP) is to protect individuals at contaminated sites (see 55 FR at 8710), and rejected using population risk as the point of departure for setting clean-up levels (see 55 FR at 8718). In addition, the CERCLA regulations (see 40 CFR 300.430(e)(2)(i)(A)(2), and 55 FR at 8848) direct EPA to establish preliminary remediation goals for carcinogens based on ''cancer risks to an individual.''

Population risks arising from contaminated groundwater due to waste management are expected to be low, because often only a limited number of domestic wells will be near these facilities, and groundwater moves very slowly. EPA's Guidance for Risk Characterization (USEPA Science Policy Council, February, 1995) states that, when small populations are exposed, population risk estimates may be very small, however, ''in such situations, individual risk estimates will usually be a more meaningful parameter for decision-makers.'' Finally, it is important to note that the Agency is also concerned about the loss of the groundwater resource for the future, which could be of particular concern if land use patterns were to change and there were a future demand for the resource. In this case, beneficial uses would be precluded or, if the potential users were unaware of the contamination, risks could occur.

Additive Risks From Multiple Units

One commenter stated that risks posed through different groundwater and nongroundwater pathways should be summed when the potential for simultaneous exposure exists, but that EPA instead assumed that groundwater exposures were occurring after the nongroundwater exposures. The commenter noted that the time of travel for benzene and perhaps other mobile constituents in EPA's groundwater risk assessment is 17 years or less, clearly within the period of time nongroundwater exposures may occur.

EPA does not agree with the commenter's suggestion that groundwater and nongroundwater risks should be combined. This is because, as discussed previously, EPA's analysis showed that groundwater risks are only potentially associated with landfills, and nongroundwater risks are only potentially associated with LTUs. Therefore, the only potential for the combination of groundwater and nongroundwater risks to be significant, would be for a situation in which a landfill was located in close proximity to a LTU. EPA examined the information provided in the 3007 Questionnaire for any sites where landfills and LTUs are co-located, and presented the results in the April 1997 NODA. This analysis showed only one facility at which a nonhazardous LTU and landfill were both located at the same site, and even in this one case the units are approximately 5,000 feet apart, making significant simultaneous exposure unlikely.

6. Specific Groundwater Modeling Issues

Active Life of Landfills

Two commenters disputed EPA's assumption of 20 years for the active life of landfills to estimate the total volume of a specific waste placed in a landfill, and argued that the report and data for off-site landfills used by EPA to make this assumption (National Survey of Solid Waste (Municipal) Landfill Facilities, EPA/530–SW88–034, September 1988) actually demonstrate an active life of at least 40 years. The commenters believed that this is an important difference, because this would increase the total waste volume used as input to the groundwater models and result in increased risks.

In response, EPA reexamined the report cited and concluded that the assumed active life of 20 years may be an underestimate. Using the data in the report, however, the Agency calculated that an average active life of 30 years is more appropriate for us in the risk assessment, rather than the 40-year life suggested by the commenter. EPA believes that the commenter simply summed the reported average age of the landfills (19 years) and the average remaining life (21 years) to obtain 40 years. However, this calculation is not appropriate, because it would overestimate the active life for existing units. This is because the average age in the report included closed units, not only existing units, and thus does not reflect the average life for those units still in operation. Likewise, the average remaining life given in the report included planned units, as well as existing units, and this also would tend to inappropriately increase the apparent active life for existing units. Correcting for this by eliminating closed and planned units, EPA calculated a 30-year active life, based on corrected values of 16.5 years for the average age of active units, and 13.3 years for the average remaining life of active units (see Additional Listing Support Analysis, 1998, in the docket to today's rule for full calculations). EPA has used the revised active life (and correspondingly larger volumes) to calculate the new risk numbers given in Table IV–1.

The same commenters also argued that EPA's use of a 20-year life for on-site landfills was wrong. In the NODA, EPA provided an analysis of the data for on-site landfills for refineries from the 3007 Questionnaire, showing a calculated median of about 21 years for on-site landfills. The commenter continued in comments on the NODA to dispute the 20-year calculation, and cited an alternative method presented by EPA in the NODA to calculate a 39-year average (i.e., mean) active life, which the commenter argued EPA should use.

In the NODA analysis, the Agency used the projected date for closure of on-site landfills reported by refineries in the 3007 Questionnaire to estimate active lives. EPA also examined an alternative method to calculate on-site landfill life for use when facilities did not report the projected date of closure. Under this alternative method, EPA used the remaining capacity reported for the units, assumed disposal rates for all wastes in the landfills would remain constant, and thereby estimated when the landfill may reach full capacity. EPA believes the direct method chosen is most appropriate because it uses the actual landfill lives reported in the 3007 Questionnaire, rather than relying on estimating remaining active life by projecting past waste disposal rates into the future. The alternative approach is especially uncertain when the landfill is relatively new, thereby requiring the extrapolation of a small percentage of used landfill capacity into the far future, which means that small variations or errors in the used capacity of a landfill may lead to widely varying landfill life projections. Thus, EPA did not revise its modeling for on-site landfills to reflect a longer landfill life. EPA also used the median active life, rather than the mean suggested by the commenter, because the median value lessens the impact of widely variable data and outliers. For example, a few very large values in a data set would have a major impact on the mean, but the median would not be overweighted by the few very large values. EPA notes that the only data available for off-site municipal landfills were average values, not medians, so the Agency had no choice but to use the average estimate active life for the off-site landfills.

Furthermore, EPA notes that many of the wastes of concern, such as the

sediments from storage tanks, are generated only intermittently, since facilities clean out crude oil storage tanks about every 5–10 years. While refineries may have many such tanks of different ages, EPA estimates that a typical refinery may generate such a clean out waste about every 1.5 3 years. In effect, a typical facility may not dispose of the tank sediments in on-site units every year, but approximately every 2 years. Therefore, even assuming arguendo that the on-site active life might be about 40 years, as the commenter suggested, if tank sediment is only generated every two years or so, the total volume of a specific waste in the unit may more closely resemble 20 years worth. EPA notes that, unlike on-site units, off-site landfills may accept waste from other refineries, thus disposal may well occur every year. Therefore, the 30-year active life used for off-site units is a more appropriate measure of the number of years a specific waste may be disposed.

Finally, EPA notes that because the revised risks from off-site landfills were somewhat greater than risks from on-site landfills for the wastes of most concern to the commenter that the Agency is not listing (i.e., unleaded gasoline tank sediment, and HF alkylation sludge), the off-site risks are likely to be determinative in any case.

Waste Unit Area

Two commenters believed EPA should have used larger waste unit area sizes in its groundwater risk assessment, and that this would result in the listing of more refinery wastes. These commenters questioned EPA's decision to vary on-site landfill sizes for different petroleum wastes when projecting mismanagement scenarios. The commenters argued that since any petroleum waste can be disposed in any on-site landfill, EPA should assume that any waste will be disposed in units representing the largest landfills. The commenters believe that a larger waste unit area would result in a higher concentration at the receptor well, and that EPA underestimated the risk associated with several of the wastes the Agency decided not to list.

In response, EPA notes it used waste quantity and on-site landfill sizes in the modeling analysis for individual waste streams from the RCRA 3007 Questionnaire responses, which are based on actual petroleum waste management practices. EPA disagrees that a refinery would necessarily use a landfill to dispose of any number of wastes, and the Agency believes that there are indeed reasons why a facility would not dispose all its generated waste in an on-site landfill, including permit limitations and liability considerations. EPA verified such limited or segregated management practices during site visits. For example, EPA reviewed site visit reports for four facilities that operated on-site nonhazardous landfills. Two facilities manage Fluidized Catalytic Cracking (FCC) catalyst and fines, but no other listing or study wastes in their landfills. The other two operate the on-site landfills for disposal of only some of their generated wastes. Other wastes are disposed off-site or recycled. EPA believes its approach of calculating different unit areas for different wastes was reasonable because they are reflective of actual operating practices, and another approach may result in unrealistic or unreasonable assumptions regarding waste management practices. As noted in the above section on waste management assumptions, a refinery may choose different disposal practices based on a variety of considerations, including the waste's characteristics and access to landfill capacity. Furthermore, it is not necessarily true that the larger the landfill, the higher the resulting receptor well concentration. The modeled receptor well concentration is a function of a number of parameters, such as waste volume, leachate concentration, the concentration of constituent in the waste, and various chemical transport properties. Thus, for a given waste volume, a larger landfill area will not necessarily produce higher well concentrations.

The commenters also stated that the standard off-site landfill areas used by EPA were arbitrarily small (2,020 square meters (m^2) median; 162,000 m^2 high-end). The commenters noted that EPA apparently derived these area sizes from an industrial landfill survey taken of on-site industrial waste landfills, and therefore the areas are inappropriate to use for off-site units. The commenters went on to state that the Agency should use data available for municipal solid waste landfills for the off-site modeling, (i.e., the same database EPA relied on for length of active life.) They noted that the areas reported for active municipal waste landfills in EPA's 1988 survey appear many times greater than the volumes used by EPA.

EPA agrees first that the median area used by EPA in this analysis was in error, and believes that the data for off-site municipal landfill area cited by the commenter are more appropriate for modeling off-site landfills than the industrial database used by the Agency. This is primarily because, as the commenter noted, the database originally used by EPA reflected landfill areas collected from what are likely industrial on-site landfills, rather than off-site landfills. EPA does not have, at this time, any area data for off-site industrial nonhazardous landfills, so the Agency has decided to use the data available for off-site municipal landfills. The use of municipal landfill data is entirely appropriate because the refineries reported in the 3007 Questionnaire that close to one-half of the wastes disposed off-site went to municipal landfills. Therefore, EPA revised the groundwater modeling for off-site landfills to reflect the larger areas associated with municipal landfills, and the risk results in Table IV–2 incorporate the revised landfill areas.

Noningestion Exposures for Groundwater

One commenter stated that EPA's groundwater risk assessment only considered the impact of ingestion of the water, but ignored potential risks from inhalation and dermal absorption of contaminants that might arise from the use of water in the home (e.g., showers or bathing). Such an additive affect would increase the overall risks from groundwater exposures.

EPA agrees with the commenter that the noningestion exposure route for groundwater may be important for some constituents. The Agency presented its analysis of such noningestion risks in the NODA. For the wastes under study, this was only significant for benzene (no other toxic constituent of concern was volatile enough to affect the risk evaluation). EPA's analysis resulted in effectively increasing risks from benzene projected to reach a receptor well by about 60 percent over the ingestion risk (See Chapter 5, Supplemental Background Document for Groundwater, 1997.)

Biodegradation of Benzene

Five commenters argued that the biodegradation of benzene should be considered in estimating the potential risks from Subtitle D landfilling of spent hydrotreating catalyst, spent hydrorefining catalyst, and crude oil storage tank bottom sediment. Two commenters used the groundwater model used by EPA (EPACMTP) to show that concentrations of benzene in groundwater decrease when a conservative biodegradation rate is assumed. Several commenters calculated benzene biodegradation rates to show that both anaerobic and aerobic biodegradation processes limit the subsurface transport of benzene in particular, and related aromatic hydrocarbons in general (benzene,

toluene, ethylbenzene, and xylenes, also known as BTEX). Commenters believed that the studies are relevant because the levels of BTEX compounds in the wastes' leachate are comparable to levels measured in the studies. Commenters argued, although the studies do not follow the Toxic Substances Control Act (TSCA) protocol developed by EPA to document biodegradation, the results should be viewed as comparable by EPA because they are presented in peer-reviewed journals.

EPA conducted an evaluation of all submitted data and the documented anaerobic biodegradation studies of benzene suggest that in-situ anaerobic biodegradation of benzene rates are strongly dependent on site-specific conditions (e.g., availability of chemicals to act as electron acceptors, availability of nutrients, temperature). The necessary conditions for anaerobic benzene biodegradation are poorly understood, and the absence of biodegradation can be caused by the presence of competing substrates, such as toluene, xylenes and ethylbenzene, as well as inadequate geochemical conditions and lack of proper electron acceptors (e.g., nitrate, sulfate, iron). Therefore, because of the lack of information to correlate site-specific controlling factors to biodegradation, the limited number of field data, and the field and laboratory evidence that benzene tends to be recalcitrant to anaerobic biodegradation, biodegradation of benzene was not considered directly in the groundwater analysis. However, EPA did complete preliminary modeling for the proposed rule that incorporated assumed rates into the analysis to see what impact this might have on receptor well concentrations (see the Petroleum Refining Listing Determination Background Document for Ground Water Pathway Analysis, 1995, in the docket for details). When assuming degradations rate of 0.00001 and 0.0001 per day, the well concentrations for all wastes examined decreased by approximately 2 percent and 44 percent, respectively. In addition, there may be a degradation ''lag time,'' which is the time period between the introduction of a constituent into the subsurface and the start of actual biodegradation. This time reflects the period subsurface microbial populations may need to acclimatize to the organic substrate before degradation may occur. Thus, if the lag time were 10 years, the decrease in the well concentration due to biodegradation assuming the higher decay rate of 0.0001 day, would be lowered to only 22 percent. These results suggest that using a conservative degradation rate would not significantly alter the risk results for benzene. For example, even assuming biodegradation of benzene lowered the high-end risks for this constituent by about 50 percent, the risks would remain above 1E–5 for the hydrotreating/hydrorefining catalysts and crude oil storage tank sediment.

EPA plans to study further the modeling of anaerobic biodegradation in the saturated zone of hazardous constituents from hazardous wastes and the physical conditions under which anaerobic degradation occurs where the Agency has developed sufficient data to permit such an analysis.

Location of Receptor Well

The distance from the landfill to the receptor well is an important parameter in the groundwater model, because the projected concentrations of constituents at the well, and the corresponding risks, increase as the well location is moved closer. EPA received comments from six commenters on the value used by the Agency for the distance to the nearest well from a landfill. One of the commenters felt that EPA should have used a smaller distance, while the remaining commenters felt EPA's value was too small.

One commenter believed EPA should have used the distance to the nearest well for off-site landfills that the Agency used in past listings, (i.e., 48 meters used in the dye and pigment proposed listing determination.) This value was less than half the value used for the petroleum listing determination. The commenter suggested that EPA perform the two parameter high-end analyses using the 48-meter distance to the receptor well.

In response, EPA notes that in its Monte Carlo analysis the Agency used the full distribution of available receptor well distances, including wells at smaller distances. The risk results for wastes of concern were presented in the NODA, and were subsequently revised as described elsewhere to yield the final results in Table IV–2 (see Section IV.B, and the groundwater background document in the docket, Additional Groundwater Pathway Risk Analyses, 1998). Concerning the well distance used in the dyes and pigments rule, EPA notes that the Agency used essentially the same underlying well distance data in this rule as was used in the dyes and pigments proposed rule. The apparent high-end value used in this earlier rule (46 meters, not 48 meters cited by the commenter) represents the 95th percentile distance, and 104 meters is the 90th percentile. However, EPA states in the dyes and pigments rule risk documentation (see page 21, Health Risk Assessment Background Document for the Dyes and Pigments Manufacturing Industry, November, 1994, in the docket for that rule) that the high-end well distance of 46 meters was chosen because this was the 90th percentile value. But as Table IV–2.7 in the dyes and pigments risk document shows, the 90th percentile value actually was 104 meters, nearly the same as the 102 meters high-end value used in the current petroleum rulemaking. Therefore, the use of 46 meters in the dyes and pigments rule as the 90th percentile distance was an oversight. Regardless, EPA believes that the 90th percentile value is more appropriate to use in the type of high-end sensitivity analysis performed for this rulemaking, and that the 95th percent value would be unreasonably conservative. EPA believes that setting two critical parameters to the 90th percentile level is a reasonable approach to generate high-end risks that are above the 90th percentile, but still realistically on the distribution. Such an approach is consistent with EPA guidance (see Habicht, 1992). EPA's Monte Carlo analysis for the groundwater pathway supports this approach, i.e., the revised groundwater risks presented in Table IV–2 show that the high-end risks are above the 95th percentile risks estimated from the Monte Carlo analysis. Therefore, EPA believes its approach is appropriately conservative.

The commenter also argued that the distance to the nearest well used in the groundwater assessment was inconsistent with the distance to the nearest receptor EPA used in the nongroundwater risk assessment. The commenter noted that the high-end value of 102 meters used for groundwater well distance is inconsistent with the high-end value of 75 meters EPA used for the nearest residence in the nongroundwater risk assessment, and that this discrepancy between the distance values is never addressed or justified.

EPA disagrees that the distances must be equivalent, because different pathways are represented in each assessment. Exposure from groundwater pathways occurs through potentially contaminated drinking water wells. Exposure from nongroundwater pathways occurs through multiple exposure routes, such as run-off and air releases from LTUs, and the point of exposure is considered the location of the residences nearest the LTU. Therefore, EPA used different data sets to estimate receptor distances for these pathways to account for well locations

for groundwater and residences for the nongroundwater pathways. For distances to residences in the nongroundwater pathways, EPA used information compiled for Treatment Storage and Disposal Facilities (National Survey of Hazardous Waste Generators and Treatment, Storage, Disposal, and Recycling Facilities in 1986: Hazardous Waste Management in RCRA TSDR Units, July 1991). These values were used instead of the ones used for groundwater because they reflect the distances to receptors being modeled, (i.e., residences at which people may be exposed to air releases or contaminated soils.) The distances to residences will not necessarily correspond to drinking water well distances.

Four commenters felt that EPA should have used data from the 3007 Questionnaire to calculate the distance to the nearest receptor well, which would result in a larger distance. Three of these commenters felt that EPA's decision to use values from the OSW Subtitle D Waste Management Facility Database was inconsistent with its earlier determination to base other information for its rulemaking on the 3007 Questionnaire. They believed that the RCRA 3007 Questionnaire obtained sufficient data from respondents, and that data from this Questionnaire is more appropriate, since unlike the OSW data, the data are specific to refineries and residuals considered for this listing. Two commenters suggested that if EPA felt there was insufficient response to the 3007 Questionnaire, EPA should have contacted non-respondents for further information.

Because of the lack of completeness of the reported well distances in the 3007 Questionnaire, the Agency decided to use well distances from the Subtitle D Survey Database. The 3007 Questionnaire response was incomplete and inadequate. Of the 172 3007 Questionnaires returned, 27 facilities reported the presence of nonhazardous on-site landfills used for the disposal of any waste in the survey in any year. Of these 27, EPA found that only 15 reported the distance to the nearest drinking water well with any reliable documentation (e.g., well location maps, groundwater flow gradients, company survey of nearby wells). This limited data set is not surprising given the difficulty associated with seeking off-site information from the refineries that is not related to on-site operations. Furthermore, wells may be placed closer to the on-site landfills in the future. Therefore, EPA relied on distances obtained from the Office of Solid Waste (OSW) database as more representative of potential well locations. EPA notes that the 3007 Questionnaire only provides well location information for evaluating on-site landfills, and even if used, would not have impacted the modeling results for off-site landfills. Because the risks from off-site landfills were higher or comparable to risks calculated for on-site landfills, any change in the results for on-site landfills is unlikely to alter any decisions to list wastes.

Two commenters disapproved of EPA's methods for locating the receptor well in the contaminant plume for EPA's high-end and Monte Carlo analyses. The commenters argued that EPA should have assumed that the well is always located on the centerline of the contamination plume, in accordance with previous Agency listing determinations, and not have varied well locations across the width of the plume. The commenters submitted modeling results purporting to show that locating the receptor well on the centerline would increase risk such that a listing is required for most petroleum refinery wastes covered by the NODA.

EPA defined the well location for modeling purposes by using the distance perpendicular to the plume centerline (Y coordinate) and the distance from the landfill to the well (X coordinate). The X distance to the well was discussed in the preceding comments. In the high-end analysis completed in the proposed rule, EPA fixed the Y coordinate of the receptor well location half-way between the plume centerline and the edge of the plume. However, the Agency has revised the two high-end parameter evaluations using a full sensitivity analysis for each waste, in which the Y-location of the well was either placed on the plume centerline (the high-end value) or at plume half-width (the median value). EPA also has performed Monte Carlo analyses in which the receptor well location was varied in such a way that the location reflected the nationwide distribution given in the USEPA database of Subtitle D landfills. The final revised Monte Carlo analyses used the available distance to well data (X coordinate) as noted earlier, and then randomly placed the well anywhere within the projected plume. Both of these approaches are more appropriate than what the commenter suggested, because placing the well on the plume centerline will tend to overestimate risks in affected wells by not considering other well locations. Therefore, EPA does not agree with the commenter, and believes that the approaches used by the Agency in the revised risk analysis fully considered well placement. In any case, EPA notes that the modeling submitted by the commenter shows that simply holding the well location on the centerline has little impact on the results. For example, the commenter's analyses that assumed the receptor well was always on the centerline yielded very minimal increases of zero to eleven percent for the four wastes they modeled in off-site landfills (see Appendix A in ''Analyses Using EPACMTP to Estimate Groundwater Pathway Risks from Disposal of Petroleum Refinery Wastes'' King Groundwater Science, in comment F–97–PRA–0005.A).

Finally, in conducting the Monte Carlo analysis for the NODA, the Agency made a key assumption concerning well location, which was inconsistent with the assumption made for the deterministic analysis. In the high-end analysis, the downgradient wells of concern were assumed to be those within the plume of contamination from the landfill, as noted above. For the Monte Carlo analysis, all potential wells within a 180-degree arc downgradient from the landfill were included, thus including wells that would never be affected by contamination from the landfill. Each approach can provide valid assessments of risk distributions, but the two approaches describe risks for different populations of receptor wells. Upon further consideration of this issue, the Agency determined it is most interested in risks at well locations that *could* be affected by the landfill. Including wells that, because of their location, could not be affected no matter how toxic or mobile the waste constituents, provides EPA with little information about the waste on which EPA is making a decision. Thus, EPA has relied on the revised Monte Carlo analysis that includes only those well locations that were within the plume. The results of this change, along with the other revisions to waste volume and landfill area estimates that were described earlier, show that risks are higher than previously reported for different percentiles on the Monte Carlo distribution. For example, the Monte Carlo risk for landfills for crude oil tank sediment with the receptor well restricted to the plume was 1E–5, an increase over the Monte Carlo result of 7E–6 when placing the well anywhere downgradient, and more comparable to the high-end results from the sensitivity analysis, 4E–5. With this adjustment in the Monte Carlo assumptions, the high-end and Monte Carlo results appear more consistent, and EPA believes that such an adjustment is logical.

The differences between the two different approaches in locating receptor

wells in the Monte Carlo analysis is most obvious when comparing the constituent concentrations at the well calculated to be the 50th percentile values, otherwise known as the ''central tendency.'' By restricting the well location to the plume, the 50th percentile concentrations are over several orders of magnitude greater than those predicted when the well location is allowed to be outside the plume. (See Additional Groundwater Pathway Analysis, 1998, section 5.3.1, in the docket for this rule for more details.)

EPA would like to use this occasion to make some observations about central tendency estimates. There is a common misperception that the central tendency estimate might be an ''unbiased'' or ''best'' estimate of risk. That could be extremely misleading, especially where it is difficult to distinguish variation and uncertainty. The 50th percentile estimates in the EPA groundwater Monte Carlo risk assessment used to support listing determinations under RCRA strive to be estimates of results for which half of the potentially exposed receptors face more risk and half face less risk in some group. However, that does not mean that such an estimate is a ''best estimate'' of a relevant result. As an example, consider if EPA did Monte Carlo estimates of groundwater risk at all wells in a 360 degree direction from a unit. In many cases (notably those with a fairly constant direction of groundwater flow relevant to any upgradient wells), well over half of the wells within any distance of the unit will be unaffected by releases from the unit and will have no risk. This would occur no matter what the toxicity or mobility of the hazardous constituent, and even though deterministic modeling might show with high certainty that wells in the direction of groundwater flow from the unit would have high risk. Clearly a central tendency estimate of ''no risk'' is not a ''best'' estimate of whether or not there will be groundwater risks, nor even a predictor of ''mean'' risk or of the ''expected value'' risk. Instead, it gives an indication that there is considerable variation and that many or most wells will not be affected. That indication would not give EPA any confidence that a hazardous constituent would not have significant effect on the downgradient wells, nor any particularly useful information on the toxicity or mobility of the waste.

Monte Carlo Versus Deterministic Analysis

Two commenters felt that the deterministic high-end risk assessment used by EPA does not allow EPA to determine what percentile of the risk distribution is represented by the high-end analysis. In response, EPA performed a Monte Carlo groundwater analysis to generate probability distributions for risk presented by each waste. These results were presented in the NODA, and revised Monte Carlo analyses, using the revised inputs for landfill area and lifetime, are given in Table IV–2.

Several commenters recommended that the Monte Carlo analysis serve as the basis for a listing decision, due to the superior quality of the Monte Carlo-based risk estimates in comparison to the deterministic risk estimates (i.e., point estimates). They noted that in the NODA, EPA states that the Monte Carlo analysis ''confirms'' the risk findings (62 FR 16750–51); the commenters disagree with this approach and state the Monte Carlo results should be used as the primary determinant of individual risk. The commenters cite EPA guidance that has recognized the superior quality of Monte Carlo-based risk estimates compared to high-end approaches.

In response, EPA notes that the Agency's ''Policy for Use of Probabilistic Analysis in Risk Assessment'' states that ''* * * such probabilistic analysis techniques as Monte Carlo analysis, given adequate supporting data and credible assumptions, can be viable statistical tools for analyzing variability and uncertainty in risk assessments.'' The policy also states that ''[i]t is not the intent of this policy to recommend that probabilistic analysis be conducted for all risk assessments supporting risk management decisions.'' In addition, as one of the conditions for using Monte Carlo analysis, the policy states that ''[c]alculations of exposures and risks using deterministic methods are to be reported if possible.'' Thus, the commenter's contention that information from Monte Carlo analysis is necessary to make a defensible listing determination is over broad and is inconsistent with Agency policy. The Agency's policy indicates that Monte Carlo analysis can be a useful tool for providing additional information on variability and uncertainty in certain situations (which is the way it was applied for this listing determination).

Furthermore, it is important to note that the Agency's policies do not indicate that there is any particular point on a Monte Carlo distribution that should be the point at which the Agency regulates or does not regulate. The 1992 guidance (memorandum from the then Deputy Administrator F. Henry Habicht ''Guidance on Risk Characterization for Risk Managers and Risk Assessors'') states that ''[t]he 'high end' of the risk distribution [generally the area of concern for risk managers] is conceptually above the 90th percentile of the actual (either measured or estimated) distribution. This conceptual range is not meant to precisely define the limits of this descriptor, but should be used by the assessor as a target range for characterizing 'high-end risk'.'' Therefore, a high-end estimate that falls within the range (above the 90th percentile but still realistically on the distribution) is a reasonable basis for a decision.

Exposure Duration

One commenter questioned why the groundwater risk analysis used a constant exposure duration of 9 years for receptors, while the nongroundwater risk analysis for LTUs included this parameter in the sensitivity analysis and used a high-end value of 30 years. The commenter submitted modeling analysis that purported to show that including exposure duration as a high-end parameter in the sensitivity analysis would result in increased groundwater risks, and specifically cited increased risks for crude oil tank sediment and unleaded gasoline tank sediment.

EPA does not agree that exposure duration is a particularly sensitive parameter in the analyses at issue. In the sensitivity analysis using exposure duration presented in the commenter's groundwater analysis, 30-year exposure risks appear to be erroneously calculated by simply multiplying the calculated 9-year exposure groundwater risk by a factor of 3.33, corresponding to the ratio of 30 years/9 years. However, EPA's risks based on a 9-year exposure duration were calculated from the peak well concentrations averaged over a 9-year period, using health-based numbers derived for a 9-year exposure period. The more accurate approach to model 30-year exposure would be to calculate maximum 30-year average groundwater concentrations from the modeling results, and then calculate the risk based on health-based numbers derived for a 30-year exposure period. Maximum 30-year average well concentrations may be smaller than 9-year average well concentrations depending on the peak concentration period. The commenter's apparent approach of simply scaling up risks based on a 9-year exposure by a factor of 3.33 will likely overestimate the extrapolated risk for a 30-year exposure. EPA examined the effect of including exposure duration as an independent parameter in a sensitivity analysis for several wastes (HF alkylation sludge, unleaded gasoline tank sediment, and hydrorefining catalyst). The results of the analysis

showed that exposure duration was never a sensitive parameter, and including it in the sensitivity analysis had no impact on the selection of the two high-end parameters or the risk results for any of the wastes examined (see Section 3 of Additional Groundwater Pathway Risk Analyses, 1998). Therefore, EPA does not believe this factor greatly affects the risk calculations conducted for this rulemaking.

Potential for Release of Oil Phase From Wastes

One commenter believed EPA inappropriately discounted the potential for migration of nonaqueous-phase liquids (NAPLs) arising from free oil in the wastes to the groundwater zone beneath the waste units. (Note that NAPLs that sink in water because they are more dense are called DNAPLs, while NAPLs that float because they are lighter than water are called LNAPLs). The commenter argued that EPA underestimated risk by evaluating management conditions unfavorable for NAPL release from landfills. The commenter also stated that EPA ignored the impact of this oil phase, or NAPL, on transport of waste constituents in the groundwater zone to the receptor well. EPA's evaluation in the proposed rule had concluded that the NAPL flow, if any, from these residuals will not reach the underlying aquifer and thus further modeling was not necessary. The commenter argues that EPA underestimated the fraction of oily liquid in the waste (suggesting a value of 80 percent), falsely assumed that the waste will be uniformly mixed with benign material that would not contribute to free oil, overestimated the capacity of the soil beneath the landfill (the unsaturated zone) to retain oil released from the landfill, and failed to consider the potential movement of the oil sideways in the subsurface.

EPA does not agree with the commenter's assertions. First, EPA notes that the its analysis assumed a 27 percent free oil content in the waste for its initial calculations, based on data from the 3007 Questionnaire. This is more realistic than the value of 80 percent cited by the commenter, because the 80 percent value resulted from an error in reporting. The 80 percent value represents the waste prior to deoiling, and does not reflect the oil content of wastes in landfills (see Supplemental Background Document-Listing Support Analysis, April 1997 in the docket, App. A). The Agency used EPA's Composite Model for Oily Waste (EPACMOW), which accounts for both aqueous phase and non-aqueous phase flow and transport, to estimate constituent transport. High-end parameters were chosen for sensitive parameters (landfill area, waste quantity, waste fraction, constituent concentration, and infiltration rate). Thus, even assuming the oil fraction is free to migrate, the model predicted no release of NAPL from the landfill, because there is not sufficient oil to saturate the material in the landfill beyond the 10 percent soil or waste saturation limit. Below this limit the oil will not migrate as a NAPL. If the oil does not escape the landfill, the NAPL cannot saturate the soil beneath the landfill, nor can NAPL-facilitated transport in the subsurface occur.

EPA believes the commenter's concerns about NAPL or free-oil release from landfills are unwarranted for a more fundamental reason. As discussed elsewhere (see Sampling and Analysis of Refinery Wastes), the residuals of concern are not oily in the manner anticipated by the commenter. While the sampled residuals may contain oil, this observation is not equivalent with concluding, as the commenter does, that free oil is present in these residuals. The method used to estimate oil content in the samples, the Total Oil and Grease (TOG) method, will overestimate ''free'' oil because it uses a strong organic solvent to extract various organic material, including waxes, greases, and higher molecular weight oils that are not mobile. During EPA's observation and handling of crude oil storage tank sediment during sampling and laboratory analysis, a discrete free oil phase, was not observed. None of the samples analyzed via the TCLP in this investigation were found to have oily phases. In addition, as noted elsewhere, reported oil and grease content of landfilled wastes support EPA's conclusion that wastes with high oil content (whether free oil or not) are not typically land disposed. This result is consistent with EPA's belief that oil concentrations in a landfill will not reach the levels the commenter suggested, since refineries generally have economic incentives to recover free oil and minimize the amount of oil that is disposed in wastes.

The commenter also submitted a report to document the plausibility of NAPL flow of contaminants from waste management areas (''Release of Dense Nonaqueous-Phase Liquids to Groundwater in Waste Disposal Areas: Part 1,'' March 1997). The commenter stated that the report showed four waste management facilities ''associated'' with the petroleum sector may have released nonaqueous phase liquids, or oil, into the groundwater. The commenter concluded that refinery wastes like those at issue in this rulemaking were codisposed with other wastes in the units, and may have caused the NAPL or oil release.

EPA disagrees that the report cited by the commenter provides any information relevant to either the wastes under examination in this rule, or the type of landfill disposal at issue. EPA evaluated the report cited by the commenter and does not believe the information is particularly relevant to the listing decisions under consideration for several reasons. First, of the 26 sites identified in the report as having ''definite'' DNAPL contamination, 24 were Superfund sites listed on the National Priority List (NPL) for remediation. This limited number of NPL sites represented various industrial sites, many having a long history of many forms of waste mismanagement beyond landfilling (e.g., land spreading, land disposal of liquids, surface impoundments). As such, these sites can hardly be deemed to represent typical off-site landfills. Furthermore, the four facilities ''associated'' with the petroleum sector all operated from the late 1950s and most ceased operation by the early 1970s (one operated until 1981). Not surprisingly, the types of waste disposal that occurred at these four facilities do not resemble the typical disposal that occurs presently at landfills. The report shows (see Table A–3) that all of these facilities disposed of liquid wastes and sludges in surface impoundments; other liquid disposal practices included dumping into trenches and buried barrel mounds. In fact, from the information in the report it is not clear that any of the four sites had any unit resembling a solid waste landfill.

In addition, the four sites accepted a variety of wastes, including chlorinated solvents and other organic wastes (see Table A–2 in the report). While two sites were reported to receive wastes from tanks (''wastes from tank cleaning'' and ''tank bottom sludge''), there is no evidence presented in the report to support the commenter's assertion that any wastes were similar to the wastes at issue in this rulemaking. In fact, given the apparent predominance of disposal of liquids at these two sites, and the lack of any mention of a landfill, it does not appear likely that the wastes cited resemble the wastes under evaluation in today's rule. As noted previously, the listing residuals of concern here did not exhibit free oil, and the available data indicate that residuals sent to landfills had low total oil content. Certainly the samples of tank sediments obtained by EPA were not liquids. Therefore, EPA

believes that this report does not demonstrate anything significant, beyond the general fact that some landfills in the past have contained wastes that may release NAPLs. However, it provides no useful information about the wastes under study and their potential for NAPL formation, in either on-site or off-site disposal. EPA does not believe the information is particularly relevant to the listing decisions under consideration.

Existing Groundwater Contamination

One commenter stated that the subsurface under many refineries is grossly contaminated, and may affect the rulemaking in two important ways: (1) existing subsurface contamination can contribute significantly to groundwater risks at the modeled receptor well near refinery sites, thus EPA should include the cumulative risks in its assessments; and (2) the existing refinery groundwater contamination is often in the form of LNAPL (such phases float on top of the groundwater and typically contain lower molecular weight constituents, such as those found in gasoline) or other conditions that can facilitate the transport of organic contaminants at refinery sites, including but not limited to the PAHs in refinery wastes. The commenter noted that the rate and extent of LNAPL migration can depend upon site-specific circumstances, and often results in lower dilution and attenuation, and could result in higher concentrations at a receptor well. The commenter stated that while there is no nationwide survey of LNAPL occurrence at refinery sites, there is ample evidence that LNAPL contamination is frequent and severe, and EPA must take into account the hydrogeologic conditions known to the Agency that can affect the transport of hazardous constituents. However, the commenter did not offer any suggestions as to how to consider such ''facilitated transport'' in the groundwater assessment.

EPA agrees that there are no doubt petroleum refineries at which significant LNAPL contamination from product spills exist; however the Agency does not believe this should have a significant impact on its listing decisions for several reasons. First, EPA's risk assessment is conservative in that it assesses incremental risk associated with targeted residuals using a relatively low $10-5$ to $10-6$ risk listing threshold, in part because of possible exposure to unknown pollutants. Furthermore, EPA cannot conclude that LNAPLs would be present at the precise sites where these wastes are likely to be disposed and potentially release constituents. As the commenter also noted, the rate and extent of NAPL migration can depend upon site-specific circumstances. The proper consideration of existing contamination would call for the full analysis of many other site-specific factors as well, some of which may tend to reduce constituent release from landfills, subsurface transport, and human exposure. Such factors would include the possible lack of potable groundwater near the site, and potential biodegradation at some sites, perhaps accelerated due to the prevalence of subsurface organisms that may exist in areas with contamination. Further, if LNAPL or other contamination exists, there may well be ongoing remediation, perhaps involving groundwater interception or pumping that would significantly alter or limit groundwater flow. The Agency believes that a site-specific assessment would be more appropriately carried out by State or Federal programs related to remediation of sites, and that such an approach would be quite difficult to follow in pursuit of an industry-wide listing determination.

EPA also notes that it is not likely that aquifers so widely contaminated so as to have floating hydrocarbons would be a continuing source of drinking water. Such contamination should be easily detected and avoided, and would be unlikely to lead to the multiple-year transport and exposure scenario that is the basis for EPA's risk assessments. Furthermore, the level of benzene in likely sources of LNAPLs, gasoline (1.6 percent average, or 16,000 ppm), would dwarf any potential risk that might arise from the leachable levels of benzene in wastes under consideration in this rule, making any concept of cumulative risk difficult to apply in any meaningful way in a listing determination. (For comparison, the highest level of benzene in any TCLP sample of listing residual was 39 ppm for hydrotreating catalysts). As noted above, the commenter's approach also presumes a number of additional worst-case assumptions (regarding the presence of critically placed NAPLs) that cannot be considered in a vacuum, and would require the consideration of many other site-specific factors to fully evaluate.

The Agency notes that the practical impact of considering LNAPLs and facilitated transport, even if this could be done, is not likely to be significant for most wastes of concern. EPA has decided to list the wastes with higher oil content (CSO tank sediment and crude oil tank sediment), as well as the spent catalysts. Thus, the wastes for which this comment is most relevant are being listed, leaving unleaded gasoline tank sediment and HF alkylation sludge as the only other wastes that showed any groundwater risk of concern to the commenter. EPA notes that the effective dilution and attenuation factors for benzene resulting from the modeling (DAF; calculated by dividing the TCLP input at the point of release from the landfill by the projected concentration at the receptor well) for both of these wastes were on the order of 2 to 4 (see Additional Groundwater Pathway Analysis, 1998). These low DAFs approach the theoretical limit of one, which mean that benzene released from the landfill is estimated to reach the receptor well at concentrations that approach the levels in leachate released. Therefore, it is highly unlikely that EPA's assessment significantly understates groundwater risks for these wastes, and any further considerations in the modeling (such as ''facilitated transport'' due to existing contamination) are unlikely to significantly alter the modeling results.

Unlike the modeling for benzene, which is relatively mobile in groundwater, the limited modeling for PAHs detected in TCLP samples indicates that contaminated subsurfaces may have the potential to affect the migration of PAHs in groundwater. PAHs are relatively insoluble in water and are not expected to migrate easily via aqueous leaching and transport, and the high-end analysis for the PAH benz(a)anthracene showed DAFs of 15–64 (see Additional Groundwater Pathway Analysis, 1998). As the commenter noted, the presence of existing contamination such as NAPLs in the subsurface may facilitate migration. Some oily wastes contained potentially significant levels of PAHs (CSO sediment, crude oil storage tank sediment), and while TCLP results showed no detectable leaching, the detection limits in these samples were above health-based levels. It is difficult to assess potential groundwater risks from PAHs with complete certainty because undetected but potentially significant levels might possibly be in the TCLP leachate. PAHs could theoretically present some risk if they leached at their aqueous solubility levels, which in many cases are below detection limits. For example, the water solubility of benz(a)anthracene (0.013 mg/L) is 32 times the health-based level (4E–4 mg/L at the 1E–6 risk level), and this level is very close to the method detection limit (about 0.010 mg/L). While EPA cannot quantify any risks from TCLP samples in which PAHs

were not detected, the presence of these carcinogenic PAHs in the waste present some potential for additional risk, especially if transport is facilitated by existing contamination. Therefore, while EPA is not using the presence of carcinogenic PAHs as the sole or overriding factor in listing any waste (except for CSO sediment which clearly exhibited high risks from nongroundwater pathways due to PAHs), the presence or absence of carcinogenic PAHs was a contributing factor EPA considered in decisions to list or not list certain wastes (i.e., crude oil storage tank sediment, unleaded gasoline tank sediment, and HF alkylation sludge. However, EPA would not list solely on the undetermined potential for groundwater risks from PAHs given their relative insolubility, and because facilitated transport by LNAPLs is a complex hypothesis that EPA did not find likely for these particular wastes.

7. Specific Nongroundwater Modeling Issues

Uncertainty Analyses in Indirect Exposure Assessment

For both the proposed rule and the NODA, estimates of non-groundwater pathway risks were derived using a deterministic risk assessment method, which produces point estimates of risk using single values for input parameters. In this method, input parameters are varied between the central tendency value (50th percentile) and the high-end (90th percentile) values. The point estimate in which all variables are set at central tendency is assumed to be the central tendency risk estimate, and the highest risk estimate for any combination of double high-end variables (with all other variables set at central tendency) is assumed to be the high-end estimate of risk. The high-end risk estimate is presumed by the Agency to be a plausible estimate of individual risk for those persons at the upper end of the risk distribution. The intent of these descriptors is to convey estimates of exposure in the upper end of the distribution (i.e., above the 90th percentile), while avoiding estimates that are beyond the true distribution. The high-end risk as estimated in the proposed rule and NODA is the highest risk estimate for any combination of double high-end variables defined as those two variables modeled that, when set at 90th percentile values, pose the highest risk of all possible combinations of any two variables. Using this methodology, the point estimate in which all variables are set at central tendency (50th percentile) is assumed to be the central tendency risk estimate, and the highest risk estimate for any combination of double high-end variables is assumed to be the high-end estimate of risk (above the 90th percentile; see Agency guidance in the Habicht memo, 1992).

The Agency requested comments on how best to factor uncertainty into Agency listing determinations based on the non-groundwater risk assessment. These risk assessments are so-called ''indirect'' exposure assessments, and are discussed in the proposed rule preamble at 60 FR 57762. Indirect exposure assessments are those in which the receptors (in this case nearby residents, home gardeners, subsistence farmers and subsistence fishers) are exposed to contaminants in the waste after these contaminants have been transported from the waste management area and have entered another environmental media (in this case soil and various food products) at the receptor site. This issue is important for this rule because the potential exposure pathways of concern arose from releases of soils through erosion (run-off) or wind-blown air emissions from LTUs onto adjacent areas.

Of particular concern to the Agency in the proposal was the issue of whether it is accurate to assume that greater uncertainty generally results in a more conservative risk assessment. One commenter noted that because the uncertainty in indirect exposure assessment can lead to a substantial overestimation of risks, failure to consider uncertainty can result in listing decisions for refining process residuals that do not actually pose a significant risk. The commenter suggested that EPA could account for uncertainty in indirect exposure assessment through a quantitative probabilistic uncertainty analysis, or to list those wastes associated with substantial uncertainty only if the estimated risks are at the high-end of the risk range.

Other commenters questioned the use of individual assumptions or input parameters in the nongroundwater risk assessment for LTUs. Commenters specifically noted that EPA should include a quantitative analysis of the following sources of uncertainty in the risk estimates for residuals proposed for listing: biotransfer factors, food consumption rates, biodegradation, land application rates, and physical transport processes.

The Agency agrees that an uncertainty analysis is desirable and conducted an uncertainty and variability analysis in support of the final nongroundwater risk assessment. The Agency addressed specific comments regarding use of individual parameters (e.g., biodegradation rates) by including those parameters in the uncertainty analysis. A detailed description of the uncertainty analysis is presented in the document titled Uncertainty Analysis: Nongroundwater Pathway Risk Assessment; Petroleum Refining Waste Listing Determination available in the docket for today's rule. This document identifies the source of uncertainty or variability noted by commenters in each step of the analysis and describes the method of quantifying or mitigating that uncertainty/variability. When data distributions were available, variable parameters were included in a Monte Carlo simulation to provide a quantitative measure. If little or no data were available, a qualitative discussion of the source and effect of the uncertainty is provided. Key variables included in the uncertainty analysis include: constituent concentrations, biodegradation rates, distance to receptor, soil erosion parameters, bioaccumulation factors and bioaccumulation rates, and ingestion and consumption rates. The uncertainty associated with the generalized site assumptions of LTU area, waste quantity, and geographic location used in the deterministic analysis was addressed through the use of site-specific data where available.

The nongroundwater assessment uncertainty analysis covers three waste streams: CSO sediment, crude oil storage tank sediment, and off-specification products and fines. These were the only wastes with moderate to high levels of carcinogenic PAHs, and because PAHs were the constituents of concern for LTU risks, the risks for other wastes in this scenario were negligible (see 62 FR at 16753). EPA proposed CSO sediment for listing on the basis of the nongroundwater deterministic (high-end) analysis, which showed significant risk from PAHs. Crude oil storage tank sediment, which contains similar constituents in lower concentrations, showed risk levels from land treatment below EPA's range of concern. Off-specification products and fines also have similar constituents present in lower concentrations, but were not originally modeled as managed in LTUs for the proposal because the volumes managed this way were relatively small. However, off-specification product and fines were modeled as part of the LTU analysis conducted for the NODA to respond to comments on potential risks arising from codisposal. (See Section V.C.6 for a full discussion of the decision on off-specification products and fines).

The probabilistic uncertainty analysis was performed on a constituent specific basis, thus comparisons between the Monte Carlo and the high-end results must be made for a specific constituent to be meaningful. For example, for clarified slurry oil sediment managed on-site, the high-end risk analysis estimated a risk of 5E–5 to the subsistence farmer from dibenz(a,h)anthracene via oral ingestion pathways. The uncertainty analysis for on-site management of clarified slurry oil sediment indicated a 90th percentile risk to the farmer from dibenz(a,h)anthracene via oral ingestion of 5E–5 for the site modeled (Anacortes, WA). For CSO managed off-site, the high-end ingestion pathway risk to the farmer from dibenz(a,h)anthracene was estimated to be 2E–6. Based on the probabilistic analysis, the corresponding 90th percentile risk for this waste stream was 3E–6 and 1E–5, respectively, for the two off-site LTUs modeled (Robstown, TX and White Castle, LA). For both crude oil storage tank sediment and off-specification products and fines, the uncertainty analysis indicates that risks are below 1E–5 at the 90th and 95th percentiles for all exposure scenarios associated with on-and off-site management of these waste streams in LTUs, consistent with the high-end deterministic results.

The uncertainty analysis confirms that the high-end risk results presented in the NODA are plausible estimates of risk for individuals at the upper end of the risk distribution. In the high-end analysis presented in the NODA, the total carcinogenic risk (i.e., the combined risk from all of the hazardous constituents) for this waste was 2E–4, a level well above EPA's benchmark level of concern (1E–5). For the on-site CSO scenario, the uncertainty analysis indicates risks of 1E–5 from individual constituents at the 90th percentile of the risk distribution. Thus, the uncertainty analysis indicates that on-site high-end risks for CSO from individual hazardous constituents clearly do not represent risks that are outside of the true distribution. Rather, the probabilistic analysis indicates that high-end risks for individual hazardous constituents in some cases represent exposure below the 90th percentile of the risk distribution.

The total carcinogenic high-end risk for CSO for off-site units was 2E–5. For this waste management scenario, the uncertainty analysis indicates risks of 1E–5 from a single constituent at well below the 90th percentile. The off-site probabilistic analysis also suggests that the high-end risks may be somewhat below the 90th percentile for this scenario.

Based on the results of the uncertainty analysis, therefore, the deterministic analysis certainly does not appear to overestimate risks from CSO. In any case, the decision to list CSO sediment is clearly supported by the uncertainty analysis. The Monte Carlo risk results below 1E–5 under all conditions for crude oil storage tank sediment and off-specification product and fines also confirms the decision not to list these wastes based on nongroundwater risks (note that EPA has decided to list crude oil storage tank sediment based on groundwater risks from landfill disposal).

Run-on/Run-off Controls

EPA received numerous comments regarding the use of run-on/run-off controls for LTUs, which indicated that there was some confusion about EPA's assumptions regarding these controls in the risk assessment. The proposed listing determinations (as well as today's final decision) assumed no controls for the high-end analysis, and 50 percent effective controls for the central tendency analyses. Commenters challenged these assumptions as outlined below.

Two commenters argue that there is no legal or factual foundation for the Agency's assumption that any plausible mismanagement involving land treatment now or in the future will occur at a facility with run-off controls, much less with controls achieving 50 percent efficiency. Conversely, seven commenters state that even where there are no Subtitle C or mandatory state Subtitle D regulatory requirements for these controls, numerous other factors are motivating their use, as evidenced by the fact that most facilities use them.

EPA conservatively assumed that no run-off controls were present in its high-end analysis of risk to individuals residing near land treatment facilities because the presence and effectiveness of such controls could not be verified. The central tendency scenario, however, assumed that controls were in place that were 50 percent effective. After consideration of all comments and the available data, EPA did not change these assumptions in subsequent risk assessments for the NODA. The bases for these assumptions were responses to the 3007 Questionnaire and a survey of State programs. In the 3007 Questionnaire, refineries were asked to characterize whether run-on or run-off controls were in place at LTUs used in 1992. Based on this information, all of the 18 facilities with LTUs reported some level of controls. As part of the revised risks analysis for LTUs presented in the NODA, EPA determined all but 6 LTUs are permitted Subtitle C units, and thus required to have run-on/run-off controls (see 40 CFR 264.273). For the nonhazardous units, it was not possible to quantify the effectiveness of the controls due to the very general nature of the questions and responses.

EPA's survey of State programs showed that, while some states have established minimum standards for Subtitle D units, many states do not have regulations on run-on/run-off controls (see Communications with State Authorities on Requirements for Land treatment Units, EPA, 1995; Docket # F–95-PRLP-S0019). The effectiveness of run-off control is dependant on many factors (e.g., level of engineering design, operation and maintenance practices, regulatory oversight and minimum standards, weather conditions), and the effectiveness may vary because of the lack of Federal nonhazardous LTU standards. As a result, EPA assumed only partial effectiveness, 50 percent controls, for the central tendency analysis, and no controls for the high-end analysis. EPA does not have data available that would allow for more precise quantification of effectiveness. The Listing Program's mandate to consider potential mismanagement scenarios clearly does not rely on assumption of the best controls, but rather must more closely evaluate the weakest plausible management scenarios. In the case of LTUs, this includes the potential for no or minimal run-on or run-off controls in many states, reflecting the lack of national minimum standards. (EPA notes that, in the revised NODA analysis, the Agency did not use LTU areas for *hazardous* waste units in its risk assessment, because these units are assumed to have effective controls in place. This information would not be applicable to estimating risks for nonhazardous LTUs).

Furthermore, EPA notes that the risks arising from soil run-off have limited impact on the Agency's final listing decisions based on the outcome of the risk for the nongroundwater pathways. This is because EPA has discovered that, due to an error in the air dispersion modeling conducted for the proposal, the risk attributable to the air pathway has increased and is now the same order of magnitude as the risk due to soil erosion. (The error was in converting units from $\mu g/m^2$ to g/m^2). The unit conversion correction makes the risk due to air deposition from windblown soil from the LTU comparable to the risk

attributed to soil erosion. For example, for on-site LTU risk for CSO sediment, the total carcinogenic risk due to soil transport is 1E–4. The risk due to air deposition is approximately 7E–5, and the risk from soil run-off is about 3E–5 (see the NODA response to comment document for a more detailed discussion). Thus, soil erosion and run-off control assumptions are not as critical for the listing determination, because even in the absence of exposure through run-off, the risks for this waste are well above 1E–5 and merit listing. The relative contributions to the media concentrations of contaminants from air and erosion were investigated in the uncertainty analysis conducted in support of this listing determination.

Soil Transport

EPA received numerous comments to both the proposed rule and the NODA questioning the methodology used to estimate soil run-off and transport from an LTU to surrounding fields and water bodies. Commenters to the proposal stated that transport of soil from the land treatment area to the receptors was not physically possible as modeled by EPA's use of the Universal Soil Loss Equation (USLE).

The USLE is an empirical erosion model originally designed to estimate average soil erosion losses to waterbodies from an agricultural field having uniform slope, soil type, vegetative cover, and erosion control practices. In the proposed risk assessment, the USLE was used to estimate the mass of soil lost per year per unit area from a LTU and deposited onto an adjacent receptor site. EPA estimated the percentage of the eroded soil that reached the receptor site using a fixed sediment delivery ratio. The Agency estimated the amount of soil eroded from the LTU and deposited on each receptor site (agricultural field, residential lot, home garden) independently of soil eroded and deposited into the nearby waterbody.

In response to comments on the proposed rule, EPA substantially revised its approach to estimating soil concentrations. This approach is presented in the NODA. Revisions were made to more accurately model an integrated soil erosion setting that includes the field, a buffer zone and the water body. The revised method for estimating soil erosion incorporates mass balance assumptions within the field to stream setting, and places the receptor field between the landfill and the waterbody. The model estimates rate of soil delivery to the nearest waterbody and assumes that the soil eroded from the source that does not reach the stream is deposited evenly over the subbasin, including the garden.

Commenters on the NODA regarding EPA's use of USLE to estimate soil erosion centered on the assertion that run-off after leaving the land treatment area does not flow uniformly across the landscape, but will instead flow in a ''channel'' moving downstream toward the outlet of the basin or watershed. A number of commenters also argued that EPA's assumption of receptor locations relative to LTUs is unreasonable. They noted that EPA assumed that residences are directly downgradient of LTUs and that there are no obstructions to flow, when in fact the existence of a ditch, fence, wooded area, road, building, or swale between the landfarm and a garden eliminates this pathway of exposure. Commenters contended that the run-off cannot reach the gardens, farms and adult residents without unrealistic assumptions regarding location of receptors. These commenters argued that EPA failed to adequately respond in the NODA to proposed rule comments that the run-off from an LTU cannot physically reach the home gardens as assumed and that therefore the revisions presented in the NODA are inadequate.

EPA's revised method for estimating soil erosion assumes that the sediment delivery ratio is constant across the area between the LTU and the waterbody (i.e., it does not assume channeling), and that receptor sites are assumed to be downgradient from the source and within the same defined subbasin as the LTU. EPA believes that these assumptions are reasonable in order to estimate risk that might be expected to occur at petroleum refining locations. In the absence of specific data, EPA believes that its assumptions are reasonable and appropriately conservative, because residential locations may change over time. In addition, EPA notes that to properly consider channeling in soil erosion would require extremely detailed site descriptions of the topography and local conditions, and sufficiently detailed site descriptions are not available. In the absence of such detailed data, EPA used simplifying assumptions to estimate soil erosion that may occur over a wide range of possible scenarios. Furthermore, while the commenters disputed the modeling approach used by the Agency, they did not provide any alternative model that could be used with the information available.

For listing determinations, EPA wants to ensure that its risk estimates are conservative, and do not underestimate risks from releases from LTUs containing these wastes. As noted extensively elsewhere in this Section, other commenters have raised reasons why EPA's modeling of LTUs may underestimate risks (e.g., existing contamination around refineries, codisposal with other wastes). EPA believes that its overall modeling approach for LTUs is an appropriate middle ground and reflects risks that may arise from such units. The models used by EPA to develop this rule are exceedingly complex. It would not be practicable, and likely impossible, to develop models that would account for all possible sources of site-specific variability. Accordingly, EPA has used reasonable, simplifying assumptions to estimate risks.

As described above in the discussion on run-on/run-off controls, EPA inadvertently made an error in the modeling for the proposed rule in unit conversion, which created an underestimation of risk due to air deposition. This change was described in the nongroundwater risk background document for the NODA. Because the unit conversion correction makes the risk due to air deposition from windblown soil the same order of magnitude as the risk attributed to soil erosion, USLE modeling assumptions do not provide the sole basis for the listing determination.

Specific comments regarding the individual parameters and assumptions used in EPA's USLE calculations (e.g., steepness of slope, soil delivery rate, meteorologic and soil data) are addressed in detail in the response to comment documents for the proposal and the NODA. In addition, the modeling conducted as part of the uncertainty and variability analysis for LTUs included site-specific meteorologic data, soil data, USLE parameter values, and the distance between the LTU and the home gardener receptor. This analysis has shown that the listing decision is not altered by the use of site-specific data for some of the parameters questioned, or by variation in the receptor location.

Bioavailability and Bioaccumulation

EPA received a number of comments on the manner in which biological processes such as bio-uptake, biotransformation, and bioaccumulation were considered in the non-groundwater risk assessment. One commenter states that EPA should have, but did not, consider the potential health effects to subsistence farmers and fishers due to bioaccumulation of PAHs. The commenter contends that EPA simply ignored this exposure route for these receptors due to the ''high uncertainty'' associated with fish and

plant-to-animal bioconcentration factors for the PAHs of concern in this rulemaking. The commenter believes that EPA should consider the information qualitatively, and/or present a range of results based upon possible bioconcentration factors. EPA responds that the Agency appropriately considered bioaccumulation of PAHs in these receptors as discussed below. A more detailed response to this issue is found in the uncertainty and variability analysis conducted in support of the risk assessment for this rule.

The subsistence farmer scenarios were evaluated initially for the proposed rule using beef and milk biotransfer factors for PAHs that were estimated based on the octanol/water partition coefficient (K_{OW}). K_{OW} is a measure of the affinity a chemical has for a nonaqueous, organic environment (octanol), versus its tendency to stay in water, and is commonly used to assess the absorption rate of a given compound from the environment into organisms. Beef and dairy biotransfer factors are used to estimate the transfer of constituents from the diet of cattle into meat and milk products consumed by humans. K_{OW} was initially used as a surrogate for biotransfer because measured data on the biotransfer of PAHs from plants to cattle or other ruminants are currently unavailable. However, in the NODA, EPA decided not to use these estimates in the risk assessment because the Agency believes that use of K_{OW} greatly overestimates biotransfer for constituents with large K_{OW}s. This includes the PAHs of concern in petroleum waste streams.

Estimates of biotransfer based upon K_{OW} only consider transfer of the constituent from the concentration in the diet into the concentration in the lipid storage in the animal. These estimates do not consider metabolic pathways for any constituents. In fact, PAH compounds with large K_{OW}s are readily metabolized by the mixed function oxidase metabolic pathway in mammals to water-soluble substances, which are then excreted. In other words, these PAHs tend not to bioaccumulate in animal or human tissue, but rather to be metabolized and excreted.

To summarize, because it is not possible to estimate PAH biotransfer factors without at least one measured value for any PAH compound, the Agency did not quantitatively model risks from bioaccumulation of PAHs for the farmer and child of farmer scenarios. Rather, based on knowledge of how PAHs with large K_{OW}s are metabolized in mammals, the Agency has concluded that risk attributable to the beef and dairy pathway are likely to be less than the risk attributable to other ingestion pathways for these scenarios. A more detailed discussion of the metabolic pathways for these constituents is provided in Section 4.5 of the uncertainty and variability analysis.

Subsistence fisher scenarios were evaluated using measured bioaccumulation and bioconcentration factors (BAFs and BCFs) where available. BAFs generally reflect the transfer of contaminant from the environment to the fish from food sources. BCFs represent the transfer from the dissolved phase to the fish tissue BCF. Because measured BAFs are usually not available, BCFs are most often used. For those constituents for which neither measured BAFs nor BCFs were available, EPA assumed that BAFs did not exceed 1000 liters per kilogram of fish body weight (L/kg). This assumption is based on the data presented in Derivation of Proposed Human Health and Wildlife Bioaccumulation Factors for the Great Lakes Initiative (U.S. EPA, 1993).

While there are insufficient data to define the distributions and correlations needed for a reliable Monte Carlo analysis of bioaccumulation of PAHs in fish, EPA did conduct a quantitative uncertainty analysis after the NODA for BAFs using interval analysis. This is an appropriate statistical method for estimating missing values in a distribution even when data are limited as is the case for BAFs for PAH.

This analysis indicates that although there is not enough information to define the distribution and correlations needed for a reliable Monte Carlo analysis, the estimation of 1,000 l/kg is appropriate and within the range of uncertainty predicted for PAH compounds. A more detailed discussion of EPA's assessment of bioaccumulation of PAHs in fish is provided in Section 4.5 of the uncertainty analysis for the nongroundwater pathway risk assessment, as well as in the response to comment document for this rule (see Section M of the response to comment document for the proposed rule).

One commenter questioned the air-to-plant biotransfer factors (Bv) used by EPA in the analysis conducted for the proposed rule. The commenter stated that EPA's calculations of Bv contain errors, and claimed that EPA did not adequately explain or provide the basis for its estimate of Bv values. In comments on the NODA, the same commenter argued EPA continued to overestimate air-to-plant transfer.

EPA responds that the errors noted by the commenter were corrected in the reanalysis presented in the NODA. The basis for EPA's estimate of Bv values is as follows. Measured values for air-to-plant biotransfer factors are available for many PAH constituents. Where available, EPA used measured values. The remaining Bvs are estimated from the K_{OW} (using the Bacci equation). As previously noted, K_{OW} tends to overestimate the bioaccumulation of constituents with very large K_{OW}s such as PAHs. EPA compensated for this overestimate by reducing the calculated Bv by a factor of 40. This approach was first presented in the 1993 Addendum to Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions (EPA document number EPA/600/AP–93/003).

One commenter argues that the assumption of 100 percent bioavailability of deposited constituents is overly conservative because many constituents, particularly PAHs, bond tightly to soils and are unlikely to be available to an organism even if the soil is ingested.

In response, EPA contends that the 100 percent bioavailability represents a reasonably conservative estimate of risk that will result in a rule protective of health and the environment. The bioavailability of PAHs from ingested soil depends on several environmental and physiologic factors. The process by which ingested soil-bound PAHs are made more or less bioavailable in the digestive tract and the effect of soil characteristics are not well understood; study results are conflicting. A recent study on the oral bioavailability of PAHs from soil, reported that the oral absorption of PAHs in rats, hamsters, or humans from diet or oil is approximately 92 percent. Another recent abstract presented data for the bioavailability of the PAH benzo(a)pyrene (BaP) from soil in terms of fraction of the BaP in soil that is absorbed relative to the BaP ingested. Based on that report, the fraction of BaP absorbed varied from 0.07 to 0.75. (A more detailed discussion of this issue is provided in Section III.F of the response to comment document for the proposal in the docket). Due to the uncertainty regarding the bioavailability of PAHs in soil, the Agency believes it is appropriate to assume PAHs to be 100 percent bioavailable in order to be fully protective of human health.

Exposure Factors

Three commenters provided comments on risk to home gardeners from consumption of contaminated produce. In comments to the proposed rule, one commenter argued that EPA's estimate of risks from root vegetable consumption are overestimated by two orders of magnitude. EPA responds that,

based on this comment, the ingestion rates used for vegetables consumed by home gardeners and subsistence farmers were corrected and the corrected rates were used in the revised risk assessment presented in the NODA.

Another commenter states that the percentage of the population assumed to have gardens is overestimated because EPA did not account for the fact different rates of produce consumption by the home gardener correspond to different types of gardens. The commenter contends specifically that EPA's assessment of risk to the home gardener from CSO sediment is significantly overestimated due to overestimation of the amount of produce consumed. The commenter states that EPA should have used data from the National Gardening Association's 1994–95 survey for assumptions regarding percentage of the population with vegetable and fruit gardens and fruit and vegetable ingestion rates.

In response, EPA notes that the exposure factors (e.g., patterns of fruits and vegetables consumption by home gardeners) used in the analysis presented in the NODA were obtained from the 1997 Exposure Factors Handbook, which provides EPA's most recent data on the various factors used in assessing exposure. Furthermore, EPA addressed the variability in consumption rates within different subpopulations as a component of the uncertainty and variability analysis performed after the NODA. As previously noted, results from the uncertainty and variability analysis support the findings of the revised high-end risk analysis presented in the NODA.

Several commenters contend that EPA overestimated soil ingestion. One commenter asserts that EPA did not account for the fact that individuals ingest soil in proportion to the time spent at each location (i.e., away from home, indoors at home, outdoors at home). EPA responds that variability in soil ingestion rates has also been addressed in the uncertainty and variability analysis conducted in support of the risk assessment for this rule. The uncertainty analysis used data on soil ingestion rates provided in the 1997 Exposure Factors Handbook.

Background Contamination

One commenter notes that EPA's modeling assumes no background or other contaminant exposure to nearby receptors, an unjustifiable assumption given other waste management practices occurring at these facilities, the pre-existing contamination at many refineries, and the routine and accidental releases associated with refinery operations.

As EPA noted elsewhere in today's notice when discussing existing groundwater contamination, the Agency does not believe this is appropriate to consider for this listing for several reasons. First, EPA does not have the type of specific information on off-site contamination that would be required, nor did the commenter provide any. Furthermore, without extensive site-specific data, EPA cannot conclude that existing soil contamination would occur at the same off-site locations that might be impacted by releases from LTUs containing the wastes under study. The proper consideration of existing contamination would call for the full analysis of many other site-specific factors, some of which may reduce constituent release, transport, bioaccumulation, and exposure. Such factors include specific LTU design, the direction of any slope from the unit, the existence of downgradient residential receptors, and corrective action requirements that may lead to clean up of any release.

Fate, Transport, and Toxicity of PAHs

Commenters to the proposal pointed out that EPA failed to consider the biodegradation of PAHs in LTUs and at off-site receptor locations, thus overstating risks from PAHs in soils. One commenter noted that failure to consider biodegradation of the PAHs, 7,12-dimethylbenz(a)anthracene ((7–12-DMBA) and 3-methylcholanthrene (3-MC) in the risk analysis for CSO sediment resulted in the overestimation of risks, because these two compounds have high cancer slope factors. While biodegradation of PAHs within LTUs was considered in the analysis for the proposed listing, biodegradation that may occur during transport of soil from the LTU to the receptor location was not considered in that assessment.

EPA agrees that biodegradation during transport may be a significant removal process for PAHs and should be considered in analysis of PAH fate and transport. Therefore, in response to this comment, the nongroundwater risk analysis conducted for the NODA was expanded to include biodegradation of PAHs (including 7,12-DMBA and 3-MC) at the receptor location for the waste streams of concern. Detailed results of this analysis are provided in the revised risk assessment technical background document in the docket for the NODA. The reanalysis presented in the NODA did not significantly change the risk estimates for these waste streams; however, because some of the PAHs have relatively long half-lives (e.g., 3-methyl cholanthrene's half-life is reported to be from 1.67 to 3.84 years) so they are unlikely to biodegrade significantly prior to reaching the receptor.

Contrary to the commenter's prediction, consideration of biodegradation at the receptor did not result in reduction of risk estimated for CSO sediment. For example, based on the analysis for the proposed rule, the high-end cancer risk for the home gardener scenario from CSO sediment managed on-site was estimated to be 9E–5. Based on the NODA analysis, high-end risks for this scenario were estimated to be 1E–4.

For the analysis conducted for the NODA, EPA used only the most conservative value for biodegradation rates in order to assure that biodegradation is not overestimated when conditions and locations are not ideal for biodegradation. However, biodegradation rates were varied as part of EPA's analysis of the uncertainty and variability associated with non-groundwater risk assessment presented in the NODA. As discussed above, the results of the uncertainty/variability analysis support the findings of the revised high-end risk analysis presented in the NODA.

C. Residual-Specific Comments

The most important risk and modeling issues raised by commenters that were general in nature, or were raised repeatedly for various wastes, are addressed in the preceding section. Below EPA discusses specific comments important for individual wastes and presents the Agency's rationale for the final listing decisions.

1. Crude Oil Storage Tank Sediment

Summary

EPA is listing as hazardous crude oil storage tank sediment from petroleum refinery operations. This waste stream meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous, because it may pose a substantial or potential hazard to human health or the environment. The Agency has identified substantial risks to consumers of groundwater associated with releases from off-site Subtitle D landfilling due to benzene, which EPA has decided will not be adequately regulated under the TC. The revised groundwater risk assessment results are summarized in Table IV–2.

Discussion

The Agency proposed not to list as hazardous tank sediment from the

storage of crude oil at petroleum refineries, either on-site or at tank farms owned by or affiliated with the refineries or refinery companies. In the proposal, the Agency found risks at levels of potential concern (3E–5, high-end groundwater risk) associated with disposal in off-site landfills; however EPA believed that because the only constituent of concern, benzene, is already regulated under the TC, listing might not have been warranted. See 60 FR 57763. The proposal also reported low risks from carcinogenic PAHs potentially released from land treatment operations (60 FR 57762). The Agency solicited comment on the decision not to list this waste stream, particularly on whether the TC captures wastes of concern, whether the Agency adequately characterized the risk for this waste, and whether any other factors should be considered.

The revised risk analysis presented in the NODA for land treatment continues to show insignificant risks (<1E–6) for this residual, and EPA did not conduct any further analysis on this management scenario. The high-end groundwater risks from the NODA analysis for landfills were essentially unchanged. Also in the NODA, EPA presented risk results to assess the potential impact of the TC regulation, (i.e., input levels to the groundwater model were capped at the TC regulatory levels) assuming that wastes above this level would be properly handled as hazardous. The TC-capping reduced the risks only slightly (2E–5). In addition, EPA provided a Monte Carlo analysis of the groundwater risks that were somewhat lower than the high-end risk at the 95th percentile (5E–6), but comparable at the 99th percentile (4E–5).

In response to comments on the NODA, the Agency further revised the input data for the groundwater pathway analysis as noted elsewhere in this notice. As shown in Table IV–2, this final groundwater pathway analysis showed slightly higher high-end risks (4E–5) and Monte Carlo risks (1E–5 and 5E–5 at the 95th and 99th percentiles). As in the NODA analysis, the risks estimated with benzene input capped at the TC level were only slightly lower for the high-end analysis (3E–5) and Monte Carlo results (9E–6 and 2E–5 at the 95th and 99th percentiles).

Following careful consideration, the Agency has decided not to rely on the TC to control the risks for crude oil tank sediment, because, as the TC-capped results suggest (risk up to 3E–5), the TC may not fully capture benzene risks for this waste. Thus, even assuming refineries properly handle wastes above the TC level, wastes below this level may present risk above 1E–5. Furthermore, this sediment waste appears to be stratified as it forms in the tank, and upper layers are often centrifuged to remove oil, but bottom layers may not be (see Listing Background Document, 1995, p. 32). Even if a refinery analyzes the waste, rather than simply using its ''knowledge'' as the generator waste determination regulations allow, collecting representative samples is challenging. Therefore, due to the oily, nonhomogeneous nature of this particular waste, sampling and TCLP analysis may be problematic.

Moreover, although nongroundwater risks from land treatment are not significant, the carcinogenic PAH content of the waste is moderately high (e.g., up to 26 ppm of BaP; see 60 FR at 57762). As noted earlier in the discussion on groundwater issues (see Existing Groundwater Contamination in Section V.B.6), while EPA could not quantify any PAH risks from TCLP samples of this waste, the presence of carcinogenic PAHs in the waste pose some potential for additional risk, especially if transport is facilitated by existing contamination. While EPA is not using the presence of carcinogenic PAHs as the overriding factor in listing this waste, the presence of carcinogenic PAHs is a contributing factor EPA considered in listing crude oil storage tank sediment.

Specific Comments

Some commenters supported EPA's proposed decision not to list crude oil storage tank sediment, noting that the Monte Carlo analysis strengthens this decision and highlights the conservatism in EPA's risk assessment for the high-end analysis. In response, EPA notes that the high-end risk (4E–5), in conjunction with the other factors noted above, merits listing of this waste. The revised Monte Carlo risk at the 95th percentile also are of concern (1E–5), albeit somewhat lower than the high-end analysis. (See Section V.B.6 for further discussion on the Monte Carlo analysis). Therefore, after considering a combination of factors, including significant groundwater risk (i.e., risks above 1E–5), and the levels of carcinogenic PAHs found in these wastes, EPA believes that a listing is warranted.

Commenters opposing EPA's proposed decision not to list presented extensive comments on the risk analysis. These issues are already discussed in the portion of today's notice devoted to the Modeling Approach and Risk Assessment. Numerous comments challenged EPA's groundwater risk assessment, and one commenter provided alternative groundwater modeling that incorporated a variety of changes and purported to show higher risks for this waste than found by EPA. As noted in Section V.B.6, the Agency modified its modeling to reflect some changes, which resulted in somewhat higher groundwater risks for this waste, and EPA has now decided to list the waste.

Comments supporting a listing also argued that the Agency had not evaluated the risks posed by management practices such as landfill daily cover, road spreading, and other uses constituting disposal. EPA disagrees as described in Section V.B.2; these are practices that were rarely practiced for this waste. In any event, the disposal practice modeled provided sufficient risk for EPA to list the waste.

The comments also noted that the concentrations of key constituents in crude oil tank sediment (e.g., benzene and BaP) exceed those reported in other wastes EPA listed in 1990 (55 FR at 46365; November 2, 1990). As EPA noted in the earlier discussion on consistency with past listings, a simple comparison of constituent levels can be misleading, because the Agency must consider many factors in its listing decision. Furthermore, EPA's risk assessment methodology has evolved since 1990. However, as noted above, EPA agrees that limitations in detection limits for the PAHs in the TCLP make it difficult for EPA to rule out potential groundwater risks completely. In any case, EPA notes that it has decided to list crude oil tank sediment as hazardous, primarily because of the risks from benzene, thus these comments are not critical to the final decision.

One commenter stated that because of its variability, crude oil tank sediment is precisely the type of waste stream that is best regulated only if it exhibits hazardous characteristics. As noted above, however, EPA is not relying on the TC to control risks, because the results of the risk assessment show that this residual poses sufficient risk to warrant listing as hazardous even with the TC controls in place. Furthermore, the variability in this waste appears to exist even within wastes removed from the same tank. EPA's sampling visits indicate that this waste may form in layers in the tank, such that it is not homogeneous when removed and processed. During tank clean out, some of the oily sediment initially removed from the tank is often deoiled (e.g., via centrifuging), but other more viscous layers may not be (see Listing Background Document, October 1995).

Thus, even if a facility attempts to perform the TCLP test in good faith, sampling such a material is a difficult challenge and could lead to inaccurate results.

Finally, consistent with the proposal, it is EPA's intent that the listing for crude oil storage tank sediment from refinery operations be limited in scope to wastes generated from tanks that are either on the refinery site, or at tank storage areas owned or under contract to the refinery. Thus, the listing does not apply to storage tanks upstream at exploration and production sites, or associated with pipelines or other crude oil transportation conveyances. EPA's meaning with respect to the term ''affiliated'' was to extend the scope of the listing to all tanks containing crude oil that are owned by the refinery and used in refinery operations. EPA has not collected data necessary to characterize non-refinery sediments. Furthermore, many of these non-refinery materials are governed by special statutory provisions (i.e., the ''Bevill'' provisions), and are currently exempt from regulation as hazardous waste (See 60 FR at 57764.)

2. Clarified Slurry Oil Sediment

Summary

EPA is listing as hazardous CSO storage tank sediment and/or in-line filter/separation solids from the filtration of CSO from petroleum refinery operations. This waste stream meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous, because it may pose a substantial or potential hazard to human health or the environment. The Agency identified substantial risks to residents and home gardeners near on-site and off-site LTUs through direct ingestion of contaminated soil released from these units. The contaminants of concern, PAHs, also tend to accumulate in food sources such that this waste causes even higher risks to nearby subsistence farmers and fishers. EPA is not promulgating any of the proposed options for conditional listing, because revised risk analysis for releases from off-site landfills showed some risks of concern to consumers of groundwater (see Table IV–2).

Discussion

The Agency proposed to list sediment from CSO storage tanks (including solids from in-line filtration or separation of CSO) as hazardous, due to high-end cancer risks of up to 9E–5 and 8E–5 arising from receptors exposed to contaminated soil released from on-site and off-site LTUs respectively. High-end risks associated with the landfill disposal of this waste stream were below the 1E–6 level, and EPA proposed various options for a conditional listing that would allow nonhazardous landfill disposal, but prevent the practice of land treatment. (See 60 FR at 57776).

In response to comments on the proposal, EPA modified the landfill and land treatment risk assessments and published revised risks in a NODA (see 62 FR at 16748). The overall risk pattern did not change significantly for land treatment. Specifically, for the on-site land treatment, the revised high-end risks increased slightly (up to 2E–4), and for off-site land treatment the revised risks decreased slightly (risks up to 3E–5)(see 62 FR at 16753). The revised high-end groundwater risks due to benzene from off-site landfill disposal increased from <1E–6 to 3E–6, and the Monte Carlo risks ranged from 1E–6 to 3E–6 for the 95th and 99th percentiles.

In response to comments on the NODA, the Agency further revised the input data for the groundwater pathway analysis as noted elsewhere in this notice. As shown in Table IV–2, this final groundwater pathway analysis showed slightly higher high-end risks (4E–6) and Monte Carlo risks (2E–6 and 4E–6 at the 95th and 99th percentiles) for off-site landfills. Based on the substantial risks arising from PAHs in land treatment of this waste, EPA has determined to list this waste as hazardous. At the time of proposal, EPA believed disposal of this waste in nonhazardous landfills did not appear to pose significant risks, and so raised the possibility of a conditional listing that would allow this practice to continue. The Agency has now decided not to include a conditional listing for this waste, primarily because landfilling of CSO residuals appear also to pose some groundwater risk as a result of the revised risk analysis (4E–6). Therefore, the Agency has decided not to proceed with this new concept with this waste. Furthermore, EPA is reluctant to encourage the landfilling of wastes with very high carcinogenic PAH content (e.g., up to 230 ppm of BaP), which, as noted above for crude oil storage sediment, may present risks if mobilized in groundwater under certain conditions.

Specific Comments

Commenters responding to issues related to risk assessment of CSO tank sediment argued that results were insufficient for a listing determination because EPA found that 80 percent of the CSO tank sediment does not pose a risk to human health and the environment, and the remaining 20 percent of CSO tank sediment, disposed of in off-site LTUs, was determined to pose risk in the discretionary range only after imposing conservative assumptions.

After revising its risk assessments and considering all comments, EPA disagrees with the commenter. Three subcategories of CSO sediment can be identified. The first consists of the residuals land treated, which were found to pose risk of concern via the risk assessment as described in the proposed rule and the NODA. This volume accounts for 22 percent of the volume generated in 1992. The second consists of the residuals landfilled, which were not thought to pose risk of concern via the risk assessment as described in the proposed rule, and which account for 50 percent of the volume generated in 1992. The third consists of the balance of the residuals subjected to management practices in 1992, which were not modeled because either the practices were exempt (e.g., recycling), the residuals were already hazardous, or the management practices for very small volumes of the residuals were rarely practiced and/or adequately modeled by land treatment or landfilling (e.g., on-site road material).

EPA reassessed the first two subcategories of CSO sediment (management in LTUs and landfills), after modifying a number of parameters and modeling considerations in response to public comment. CSO sediment, when land treated, continues to exhibit risk levels (up to 2E–4) supporting a listing determination, as described in the discussion above. Furthermore, the revised assessment showed that landfilled sediments also present some risks. Therefore, EPA has decided not to proceed with a conditional listing that would allow disposal in Subtitle D landfills, but rather is promulgating a full unconditional listing for this waste.

As noted elsewhere in today's notice (Section V.B), EPA does not agree with other comments that argued EPA should have assessed risks from other management practices, such as use of CSO sediment as on-site road material. In any case, EPA is listing this waste as hazardous, thereby preventing such practices in the future.

Some commenters argued that the waste constituent characterization related to analysis of the waste itself (not the TCLP extract) is uncertain and overestimates risks. Specifically, they argued that some PAHs were detected in only one sample at concentrations below the quantification limit (i.e., ''J'' values), and that where this concentration leads to an unacceptable risk estimate, CSO sediments for the

entire industry could be listed based on a single estimated concentration in one sample.

EPA does not agree that any uncertainty in the analysis resulted in an overestimation of risk. First, EPA notes that even constituents assigned a ''J'' value were reliably detected in the waste, although the precise level has increasing uncertainty as the measurement approaches the detection limit. More importantly, contrary to the commenter's assertion, the CSO listing determination did not hinge on a single estimated value, but rather considered all of the constituents that showed risk. Several highly toxic PAHs detected in CSO tank sediment (BaP, benz(a)anthracene, dibenz(a,h)anthracene, 7,12-DBMA) were measured at levels above the quantification limits, and these constituents in the waste presented substantial risks (i.e., > 1E–5) without any consideration of ''J'' values.

Commenters argued that EPA did not follow its own guidance in applying listing factors to CSO sediment, and that a description as to how each of the listing factors weighs for or against listing should be provided.

In response, EPA first notes that all the factors in 40 CFR 261.11(a)(3) are considered in this listing decision. The commenter has not specifically identified any § 261.11(a)(3) factors that were not considered. Furthermore, EPA disagrees with the commenter and notes that its revised risk assessment fully supports the listing determination for CSO sediment and is in accordance with applicable guidance. The guidance the commenter cites is contained in the December 22, 1994 proposed rule for the dye and pigment listings, in which EPA discussed the use of risk levels in making listing decisions (59 FR at 66075–66077). EPA's decision to list this waste is consistent with the guidance, i.e., the risks associated with this residual are well above the 1E–5 listing benchmark.

EPA received comments that the Agency overstated the potential risks from CSO sediment that is land treated, and that there are no documented damage cases involving migration of PAH contaminated soils from land treatment of CSO sediments.

In response, EPA points out that it attempted to identify damage cases wherever possible to support its listing determinations (See Assessment of Risks from the Management of Petroleum Refining Wastes: Background Document, October 1995, in the docket). While EPA has identified damage cases resulting from releases at petroleum refineries, it was not possible to tie the releases directly to CSO sediments (or other wastes under review in this rule) in LTUs due to (1) the management of multiple residuals in LTUs, (2) the infrequent generation of CSO sediments, and (3) the lack of a marker contaminant unique to CSO sediments that could be linked to documented releases. The lack of empirical evidence is not surprising, but does not prove that releases are not possible or even unlikely. For this reason, EPA did not rely heavily on damage cases that directly linked releases to the specific residuals of concern. Instead EPA's weight of evidence considerations emphasized its data collection efforts (i.e., the 3007 Questionnaire and field study) that provided EPA with the raw material to evaluate a wide variety of measures of risk (e.g., modeling of numerous pathways, groundwater modeling, hazardous waste characteristics). By using information beyond proven damage cases, EPA hopes to prevent releases that lead to environmental damage.

Several commenters requested that EPA clarify the definition of the K170 listing for CSO waste. Their questions relate to whether the listing: (1) applies just to CSO separately stored/managed or also to all mixtures of CSO and other fuels, (2) includes fluidized catalytic cracker (FCC) clean out/turnaround sediments, (3) includes sediments from ''affiliated'' tank farms, and (4) includes spills of CSO.

Concerning mixtures of CSO and other fuels, EPA points out that any sediments derived from CSO or CSO mixtures are considered K170 because of the contribution of the CSO sediment to the ultimate residual. All tanks that hold CSO have the potential to generate CSO sediment, and this sediment may mix with sediment generated by other materials stored in the tanks. Thus, the resulting sediment mixture would be classified as hazardous waste K170 under the ''mixture'' rule (see 40 CFR 261.3(a)). The Agency anticipates that refiners will use the 6-month period between the final rule date and the effective date to remove ''marginal'' storage tanks from service for sediment clean out and subsequently use dedicated tank service for CSO storage to minimize the number of tanks generating the listed hazardous waste.

Concerning clean out/turnaround sludges, throughout the EPA's industry study, the Agency intended to incorporate clean out/turnaround sludges from in-line particulate removal units within the scope of the CSO sediment definition (see the 1995 Listing Background Document at page 43). One primary component of these sediments and storage tank sediments is FCC catalyst fines. Samples were collected from three storage tanks and one in-line filter. No samples of turnaround sediments were available during the Agency's field investigation; however, several refineries described the removal of sediments from other in-line separation units such as hydroclones during turnarounds. EPA believes that sediments removed from the hydroclone during turnarounds would be comparable to sludges removed from in-line filters which serve the same purpose, because both are designed to perform the same function, i.e., to remove solids from lines leading to CSO tanks. No information was submitted by the commenters to demonstrate that clean out/turnaround sediments from such in-line separation devices differ from storage tank sediments.

The Agency therefore continues to use the broader definition of CSO sediments, which includes sediments collected in filters and other separation devices in lines that move the CSO from the FCC unit to storage tanks. EPA does not, however, expect that all residuals generated during FCC turnaround would be classified as K170, but rather only those associated with in-line particulate removal equipment (e.g., hydroclones, in-line filters). This would not include sediments and tars that may accumulate within the distillation columns.

EPA's meaning with respect to the term ''affiliated'' was to extend the scope of the listing to all tanks containing CSO that are owned by the refinery that produced the CSO. (See 60 FR at 57766). This CSO has not yet been sold or transferred to another entity or corporation, and remains the property of the refinery from which it originated. All sediments settling from the CSO prior to sale are subject to the hazardous waste listing. Similarly, once the CSO has been sold or transferred in commerce, it is no longer under control of the producing refinery. The listing determinations in today's rule are for wastes generated from refinery operations, thus EPA has not examined for this rule whether other sediments might be generated, and if generated, under what conditions, after the CSO has been sold or transferred.

Concerning spills of CSO product, EPA does not intend to regulate as hazardous the CSO itself, only the sediments that are removed from this hydrocarbon product such as those generated in in-line separators and those sediments that gravitate to the bottom of storage tanks. CSO that is accidentally spilled on the ground may in fact

contain particulates that would have settled out as tank sediment. However, the Agency did not address such spills in the proposed rule and, in response to this comment, is clarifying that it does not currently intend to regulate CSO spills as K170. Spills of K170 waste, of course, would be regulated.

One commenter noted that EPA should consider an exemption from designation as hazardous for CSO sludges that are de-oiled, and claimed that de-oiled solids may be managed similarly to FCC catalyst and fines units because they are very similar in composition (i.e., the wastes would be landfilled and should not present a risk). The commenter argued that providing a conditional exemption for de-oiled sludges, perhaps with separate Land Disposal Restrictions (LDR) treatment standards, would be environmentally sound, and would tailor treatment to the nature of the waste stream.

EPA did consider whether the data available allow the Agency to distinguish between CSO sediment (as well as crude oil storage tank sediment) before and after de-oiling, especially for use in risk assessment. However, the Agency concluded that distinguishing between the two forms of CSO sediment was inappropriate based on the data available (see Listing Background Document, 1995, pages 46 and 29). Therefore, EPA disagrees with the commenter's suggestion to only list ''non-deoiled'' sediment because: (1) Available data do not provide a sufficient comparison differentiation of risks between oily and de-oiled CSO tank sludges, (2) the deoiling process may not remove the PAHs of concern, and (3) crafting a definition of de-oiled sludges would be difficult and may cause enforcement problems. Furthermore, as shown by the high PAH content in CSO sediment, the solids appear to be more than just spent FCC catalyst. EPA believes the exclusion for recycled oil-bearing residuals that EPA is promulgating in today's rule is a more effective approach to encouraging the recycling of the material.

3. Catalyst From Hydrotreating and Hydrorefining

Summary

EPA is listing as hazardous spent hydrotreating and hydrorefining catalysts from refining operations. This waste stream meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous, because it may pose a substantial or potential hazard to human health or the environment. The Agency identified substantial risks to consumers of groundwater associated with releases from on-site and off-site Subtitle D landfilling due to benzene and arsenic, which EPA has decided will not be adequately regulated under the TC. The revised groundwater risk assessment results are summarized in Table IV–2. In addition, these materials also present a hazard because of their pyrophoric and self-heating properties.

Discussion

The Agency proposed to list spent hydrotreating and hydrorefining catalysts from refining operations due to high-end cancer risks of up to 1E–5 and 6E–5 respectively arising from releases of benzene and arsenic to groundwater from landfill disposal. (See 60 FR at 57766–57768). In addition, as the Agency discussed in the proposed notice, these materials also present a hazard because of their potential to spontaneously ignite when removed from the processing unit and exposed to air.

The revised groundwater risks in the NODA increased substantially for these scenarios when compared to the proposed rule. The high-end risks for hydrotreating catalyst were up to 7E–5 for off-site landfills and up to 8E–5 for on-site landfills. For hydrorefining catalyst, the high-end risks were up to 7E–4 for off-site landfills and 4E–4 for on-site landfills. The TC-capping assessment in the NODA resulted in some decrease in risks from benzene compared to the proposal, while the arsenic risks showed little or no decrease. Thus the maximum high-end risks were not materially affected. In addition, EPA provided a Monte Carlo analysis that yielded somewhat lower groundwater risks; however, as noted in an earlier section, EPA subsequently revised the Monte Carlo analysis.

As a result of the revised risk analysis completed in response to comments on the NODA, the off-site landfill groundwater risks increased further. As shown in Table IV–2, the revised off-site risks for hydrotreating catalyst are 1E–4 for benzene and 8E–5 for arsenic; the TC-capped results for this waste showed lower risk for benzene (3E–5), but arsenic was unchanged. Similarly, the revised off-site risks for hydrorefining catalyst are 7E–5 for benzene and 6E–4 for arsenic, and the TC-capped analyses for these wastes lowered the benzene risks (3E–5) but had no impact on arsenic risk. The revised Monte Carlo risks for hydrotreating catalyst (benzene 3E–5, arsenic 2E–5 at the 95th percentile) and hydrorefining catalyst (benzene 2E–5, arsenic 4E–4 at the 95th percentile) were somewhat lower, but still well above the listing benchmark of 1E–5. As in the NODA analysis, the high-end and Monte Carlo risks for arsenic were not lowered by the TC-capped analysis. The TC-capped benzene risks for both catalysts were somewhat lower in the high-end (both at 3E–5) and Monte Carlo analyses (9E–6 and 8E–6 for the hydrotreating and hydrorefining risks respectively).

EPA believes that the overall results are strongly supportive of listing both spent catalysts. Even in the TC-capping results, both catalysts present risks in off-site landfills that exceed 1E–5. Specifically, for both hydrotreating and hydrorefining catalysts, the TC-capped arsenic risks exceed 1E–5 for the Monte Carlo and high-end evaluations, and the benzene risks exceed this benchmark in the high-end evaluation and approaches this level in the Monte Carlo analyses. As shown by the TC-capped modeling analysis, the risk levels may remain at levels of concern, even assuming wastes above the TC level are not disposed of in nonhazardous landfills.

In addition to the groundwater risks posed by these materials, the pyrophoric and self-heating nature of these catalysts also support EPA's conclusion that these materials present a substantial hazard. During several site visits to catalyst reclaimers, EPA observed smoking catalyst storage areas used to stage the catalysts immediately prior to insertion into the reclamation process. One facility told EPA during the site visit that fires occur every few months. These areas were carefully monitored and controlled, but clearly the materials exhibited pyrophoric properties. In addition, the refineries generating these residuals described the significant risks during reactor turnaround associated with the potential pyrophoric nature of these catalysts. Therefore, EPA believes that it has solid basis for using the potential self-igniting characteristic of these catalysts to support its decision to list these residuals.

EPA wishes to clarify the scope of these listings, however. In the proposal, the Agency indicated that the listings would not include ceramic support media that are separated from the spent hydrotreating or hydrorefining catalyst prior to catalyst disposal or recycling, because these support media are inert, separate from the catalyst, and commonly reused or sent for cleaning prior to reuse. (See 60 FR at 57780). EPA continues to believe this is appropriate. Some commenters requested that EPA modify the regulatory language to refer to ''inert support media,'' rather than the proposed ''ceramic support media,'' because other types of inert materials are used, such as stainless steel. EPA agrees that the commenter's language

better reflects the Agency's intentions, and is modifying the exemption language in 40 CFR 262.3(c)(2)(ii)(E) and the listing descriptions for K171 and K171 to reflect this change.

In the proposed rule EPA also noted that the terms ''hydrotreating'' and ''hydrorefining'' are somewhat loosely used within the industry. Several commenters requested a more concise definition of the terms to clarify the definitions of hydrotreating, hydrorefining, and hydrocracking processes. EPA provides further discussion of the definitions of these wastes in the following section on residual-specific comments. EPA is modifying the final regulatory language slightly to clarify this issue, as noted in Section IV.B.

Specific Comments

Definition of Hydrotreating and Hydrorefining Catalysts

EPA examined three types of hydroprocessing catalysts identified in the EDF consent decree: hydrotreating catalyst (listing candidate), hydrorefining catalyst (listing candidate), and hydrocracking catalyst (study residual). Spent hydrotreating and hydrorefining catalysts have been proposed for listing and will be promulgated as hazardous wastes in today's rule; no action has been proposed to date for spent hydrocracking catalyst. (However, the listing of the spent hydrotreating and hydrorefining catalysts does not release the generator from determining whether spent hydrocracking catalyst is a hazardous waste due to the characteristics under 40 CFR 262.11). Public comment was submitted regarding EPA's hydroprocessing catalyst definitions.

All three processes are part of a continuum of catalytic hydroprocessing units. Definitions for the three categories of hydroprocessors are not universally established or accepted. In general, the three processes may be viewed in the following order of increasing degrees of severity of operating conditions and conversion of larger hydrocarbons to smaller molecules (''cracking''), and/or feeds: hydrotreating, hydrorefining, and hydrocracking. The types of catalysts used can be similar in all three processes.

The proposed regulatory language did not attempt to define these catalysts, or differentiate them from hydrocracking catalysts. The proposal referred to definitions used in the Oil and Gas Journal (60 FR at 57767, fn. 7), which indicates that hydrotreating includes processes where essentially no reduction in the molecular size of the feed occurs, that hydrorefining includes processes where 10 percent of the feed or less is reduced in molecular size, and that hydrocracking includes processes where 50 percent of the feed or more is reduced in molecular size.

Commenters on the proposal noted that the preamble definitions did not provide a complete continuum, resulting in an unclear area between hydrorefining and hydrocracking. Specifically, since hydrorefining covered conversion rates up to 10 percent and hydrocracking covered conversion rates greater than 50 percent, as defined by the Oil and Gas Journal, it was not apparent how EPA would classify processes with conversion rates between 10 and 50 percent. Several solutions were suggested by the commenters:

> One refiner suggested that EPA establish a definition of hydrocracking that assumes a conversion rate of 15 percent or greater and the use of downstream fractionation.
>
> A catalyst reclaimer suggested extensive regulatory language describing the specific types of catalysts, catalysts support media, and catalytic applications associated with the different hydroprocessing categories.
>
> Other refiners commented that EPA should clarify that any process with conversion rates greater than 10 percent should be classified as hydrocracking.

Each of the options is problematic. Reliance on specific conversion rates may allow for slight changes in operating and accounting practices to result in reclassification of units that would otherwise be considered hydrorefiners. Similarly, use of fractionation could be interpreted to include stripper columns commonly employed after hydrotreating and hydrorefining. The catalyst reclaimer's suggested language was an exhaustive attempt to distinguish the types of processes EPA intends to be within the scope of the listings; however, other commenters argued it was inappropriate to adopt the reclaimer's suggestion because EPA did not have sufficient basis to expand the definition in this way. At this time, the Agency is reluctant to adopt this extensive list within the regulatory language without additional review and perhaps further information collection.

Upon reviewing all of the relevant materials available in the docket, the Agency believes that the simplest way to differentiate between hydrocracking units and other hydroprocessing units is to rely on the categorization used in the DOE's Petroleum Supply Annual. Refineries are required to submit Form EIA–820 annually to DOE's Energy Information Administration. This form includes the mandatory submission of data on operating capacity for catalytic hydrocracking and catalytic hydrotreating. Catalytic hydrocracking is defined in the Petroleum Supply Annual as:

> A refining process that uses hydrogen and catalysts with relatively low temperature and high pressures for converting middle boiling or residual material to high-octane gasoline, reformer charge stock, jet fuel, and/or high grade fuel oil. The process uses one or more catalysts, depending upon product output, and can handle high sulfur feedstocks without prior desulfurization.

In addition, catalytic hydrotreating is defined in the Petroleum Supply Annual as:

> A refining process for treating petroleum fractions from atmospheric or vacuum distillation units (e.g., naphthas, middle distillates, reformer feeds, residual fuel oil, and heavy gas oil) and other petroleum (e.g., cat cracked naphtha, coker naphtha, gas oil, etc.) [i]n the presence of catalysts and substantial quantities of hydrogen. Hydrotreating includes desulfurization, removal of substances (e.g., nitrogen compounds) that deactivate catalysts, conversion of olefins to paraffins to reduce gum formation in gasoline, and other processes to upgrade the quality of the fractions.

For the purposes of the K171 and K172 listing descriptions, catalytic hydrorefining is defined as a refining process with more severe (higher temperature and pressure) operating conditions than the catalytic hydrotreating process defined above for treating the heavier molecular weight petroleum fractions, residual fuel oil and heavy gas oil.

Based on the Petroleum Supply Annual definitions stated above, if a refinery has been classifying its hydroprocessor as a catalytic hydrocracker for the purposes of the DOE's Form EIA-820, spent catalyst from this unit would not be covered by K171 or K172 (with the exception of guard beds, as discussed further below). Conversely, if a refinery has been classifying its hydroprocessor as a hydrotreater processing feeds other than residual fuel oil or heavy gas oil, spent catalyst from this unit would be classified as K171; spent catalyst from a similar unit processing residual fuel oil or heavy gas oil would be classified as K172. Refineries have been reporting capacity information to DOE for many years and today's rulemaking should serve as a reference for the classification of these units.

In addition to the issue of defining hydrocracking units that are not subject to the K171/K172 listing, there is

disagreement among commenters from the petroleum industry and catalyst reclaimers regarding the classification of guard beds. These units, also known as desulfurization pretreaters, are used to extend the life of the downstream catalytic bed (e.g., reformer, hydrocracker, isomerization reactor) by removing sulfur, oxygen, nitrogen, and/or heavy metals. Reclaimers argued to include such pretreatment of hydrocracker feeds, sulfur guards, reformer pretreatment, and isomerization pretreatment as part of the definition of hydrorefining or hydrotreating. The petroleum refining industry disagreed, stating that these pretreatment processes use more severe conditions (much higher pressure, high ratio of hydrogen to hydrocarbon) to achieve contaminant removal, and also provide a significant reduction in feedstock molecular size, often greater than the 10 percent cutoff in the EPA/Oil and Gas Journal hydrorefining definition. Thus, industry contends such catalysts more appropriately belong in the hydrocracking category.

EPA agrees that these pretreatment units, or ''guard units,'' should be covered under the listing descriptions in today's rule.

In reviewing the 3007 Questionnaire responses, EPA found that some refineries reported the catalysts from their guard beds under the category of the downstream unit. For example, nickel/molybdenum catalyst from a reformer pretreatment unit was sometimes reported as spent reforming catalyst, however, true reforming catalysts are based on precious metals such as platinum and palladium. EPA believes that these units were not reported as hydrotreaters because they often reside within the unit boundaries of the downstream units, are closely integrated with the downstream units, and such reporting simplified the refinery's response to the extensive 3007 Questionnaire. However, because this type of guard bed does not result in catalytic reforming (and similarly isomerization), these units were re-coded as hydrotreaters in the Agency's database. EPA has modified the regulatory language to clarify that the spent catalyst from all such pretreatment units should be classified as K171 or K172.

Risk Assessment and Basis for Listing

Some commenters stated that EPA's groundwater analysis understated the risks for these wastes. These comments reflected many of the issues already discussed in the portion of today's notice devoted to the Modeling Approach and Risk Assessment, but the Agency notes a few issues specific to these wastes. Despite the commenters' arguments, EPA remains convinced that it is appropriate to use the TCLP to characterize the leaching potential of these residuals, as noted in Section V.B.1. The Agency's analysis of total oil and grease content of the catalysts showed very low oil and grease content (less than 0.2 percent) for the six samples for which EPA was able to conduct total oil and grease analysis, thus these are not the ''oily'' wastes that the commenter believes represent a problem for the TCLP. As the commenters noted, EPA did not consider codisposal for these wastes. However EPA believes it would be inappropriate to assess the impact of codisposal of the catalyst residuals with other refinery wastes because EPA is listing these wastes, and thus they must be disposed of in Subtitle C units in the future.

Several commenters argued that EPA's analysis overestimated risks in the Agency's assessment of spent catalysts from hydrotreating and hydrorefining for various reasons. These commenters argued that EPA data shows that 81 percent of these catalysts are already recycled or reclaimed, but EPA assumed in its risk analysis that all this material will go into landfills.

EPA disagrees with this comment. The Agency chose landfill disposal as the mismanagement scenario for the groundwater risk analysis for these wastes, because economic considerations and other information in the record show that the recycled material could plausibly go to landfills.

To calculate waste volumes to use as input to the modeling, EPA evaluated the data in two ways: (1) EPA arrayed the volumes disposed in on-site and off-site Subtitle D landfills in 1992 and determined the 50th and 90th percentile quantities (Tables 3.3.4 and 3.3.11 of the 1995 Listing Background Document), and (2) EPA arrayed the volumes for all volumes generated by any facility regardless of the actual management method (except for excluding wastes sent to Subtitle C), and determined the 50th and 90th percentile quantities for these wastes. EPA has used the second set of statistics in its risk assessment. Use of these data reflects the real potential that shifts might occur in management practices away from recycling and toward less expensive landfilling if the wastes are not listed (see a discussion of this issue in the Listing Background Document, 1995, pp. 78–79). Support for this assumption is found in industry comment that refineries may send spent catalysts to either recycling or landfill disposal, depending on the associated costs. During site visits to both refineries and catalyst recyclers, EPA learned that factors affecting spent catalyst management include the price of metals, and consequently the value of spent catalyst, and corporate policies toward recycling versus landfilling. For example, one report from a visit to a refinery (document # 95–PRLP–S0041) states: ''the spent catalyst is sent off-site for metals reclamation or to a special waste landfill, depending on market conditions.'' Another report from a site visit to a reclaimer (95–PRLP–S0057) states that the company's fee structure is driven by metals prices, and their costs and/or credits are dependent on the current metals market. The reclaimer noted that more spent catalyst is reclaimed when metal prices are high than when prices are low. EPA therefore believes that management patterns of these particular residuals could change in the future.

EPA only applied this assumption to three wastes (K171, K172, and spent catalyst from sulfur unit tail gas treating units), because these are all similar spent catalysts that are recycled at the same facilities. EPA did not project changes in waste management practices for other residuals, because the Agency has no specific information that such changes are plausible or that special trends in management practices exist. As noted in Section V.B.2, for the remaining residuals, EPA considered that 1992 provided a reasonable picture of the petroleum refining industry's practices.

Moreover, comparison of the two data sets shows the commenters' concern that the approach used overestimates risks is unfounded. The high-end (90th percentile) annual volumes calculated for both approaches are nearly identical for hydrotreating catalyst, 70 metric tons (MT) for the first approach versus 77 MT for the second. For hydrorefining catalyst, use of volumes that are recycled actually reduced the high-end volume somewhat, from 2,250 to 500 MT. (Note that the decrease in the 90th percentile in this case is because the addition of the recycled volumes creates a larger data set, and the 90th percentile point in the set is lowered for that in the smaller data set for volumes sent to landfills). Thus, EPA's approach does not overestimate risks.

TC-Capped Modeling

One commenter argued that EPA should not list hydrotreating catalyst because, based on the TC-capped modeling analyses EPA performed for the NODA, the risks for spent

hydrotreating catalyst disposal in landfills range from 2E–5 to 4E–6 from exposure to benzene (See 62 FR at 16752), and that these risk levels are within EPA's discretionary range for not listing. One commenter stated that EPA appropriately reported the risks from arsenic as not applicable because spent catalysts containing arsenic at levels sufficient to pose such risks are already covered by the TC Rule and regulated under RCRA. The commenter also argued that the risks found in the Monte Carlo analysis for hydrotreating catalyst were only 4E–6 at the 95th percentile, and, thus, support a no-list decision.

EPA disagrees with the commenters. First, the commenters are mistaken in suggesting that the arsenic risks are not applicable for the TC-capped analysis. On the contrary, the risks do not change under this assumption because none of the samples exceeded the TC level for arsenic. As such, under the TC-capped analysis the arsenic risks would remain the same as the uncapped analysis. As noted in the Discussion section above, EPA continues to believe that the risks from the high-end analysis fully support listing this waste, and the somewhat higher revised groundwater risks further support EPA's decision. Even for the TC-capped results, the revised arsenic high-end risks (8E–5) and Monte Carlo results (2E–5 at the 95th percentile), as well as the high-end risk for benzene (3E–5) clearly exceed the listing benchmark of 1E–5.

Commenters also argued that for hydrorefining wastes, TC-capped groundwater risks from benzene range from 2E–5 to 6E–6 (See 62 FR at 16752), and these risk levels are within EPA's discretionary range for listing (See 59 FR at 66073). While the comments conceded that the TC-capped risk for arsenic in this waste are in the range EPA could consider for listing (4E–4 to 1E–4), the fact that the peak arsenic concentrations may not reach the receptor well until 3400 to 8400 years after release, indicates that this is not significant. The commenters also noted that the risks from benzene and arsenic cannot be added because the time for peak concentrations at the well is much shorter for benzene (13–50 years). The commenters argued that EPA should base its decision on the lower Monte Carlo results (TC-capped risk of 6×10^{-6} at the 95th percentile for benzene).

EPA disagrees with the commenters. As noted in the Discussion section above, EPA continues to believe that the risk analyses fully support listing this waste, and the somewhat higher revised groundwater risks further support EPA's decision. Even for the TC-capped results, the revised Monte Carlo and high-end risks for arsenic (4E–4 at the 95th percentile and 6E–4), and the high-end risk for benzene (3E–5) clearly exceed the listing benchmark of 1E–5. Contrary to what the commenter implied, EPA did not add the benzene and arsenic risks, because of the large differences in travel time. Further, EPA did not discard the arsenic risk results merely because the modeling suggested the constituent may not reach the receptor well in the near future. The timeframe for travel may be uncertain, but the results suggest arsenic will be a serious problem when it reaches the well.

EPA received comments stating that spent catalyst residuals should not be listed based on the characteristic of ignitability, because the spent catalysts do not demonstrate the property of self-heating, nor do they fail the ignitability test.

As noted in the discussion above, persistent smoldering fires that may propagate to other codisposed materials have been reported for these residuals. Thus, listing of these wastes is further supported by actual environmental and health damages. Actual damages constitute one of the factors to be considered in listing wastes as hazardous under 40 CFR 261.11(a)(3)(ix). As noted previously, it is rare to have actual damage cases to be attributable specifically to the wastes being listed. The fact that EPA has knowledge of actual damage cases for these wastes gives special support to their listing determination. Furthermore, under the mismanagement criterion of 40 CFR 261.11(a)(3)(vii), it is appropriate to consider the physical properties of these wastes that may result in hazards if there is improper management through co-management with combustibles. Therefore, EPA considers the self-heating physical property of these spent catalysts to be very important in its decision to list these wastes.

With regard to commenter opinion that a listing is not warranted to protect against fires resulting from spent catalyst being landfilled, EPA observed and was told by catalyst reclamation and refinery facility operators that these wastes exhibit pyrophoric properties and do result in fires. Even where catalysts are coated with heavy oils to reduce pyrophoric properties, this effect is not permanent as the oil coating degrades, particularly if the material is disturbed at a later date and exposed to the air, as could easily happen at landfills. EPA, therefore, has a solid basis for using the potential self-igniting characteristic of these catalysts to support its decision to list these residuals

Impact of Listing on Recycling

EPA received a request for confirmation that solids generated from scrubbers used to control emissions during the reclamation and processing of spent hydrotreating and hydrorefining catalysts will not be designated hazardous under the ''derived from'' definition as a result of these proposed rules. The Agency points out that the commenter is incorrect. In general, wastes generated from the treatment of listed hazardous wastes are considered hazardous wastes, under 40 CFR 261.3(c)(2). This includes residuals generated by the recycling activities described by the catalyst reclaimers who submitted comments on this rule. Wastes generated in the manner described by the commenter (e.g., ''derived from'' air pollution control wastes) would continue to carry the hazardous waste code and be subject to land disposal restrictions.

EPA received several comments regarding the impact of this listing on recycling and management practices. Commenters noted that spent catalyst can be generated such that it meets the LDR UTS for organics, and that the metals of concern can be treated using metal fixation. This would be relatively inexpensive compared to the increased cost of recycling that will result from this listing, and might discourage recycling.

EPA does not agree with the commenters' scenario for several reasons. First, the treatment standards for the spent catalysts require that any treatment reduce levels of organics to low levels. For example, nonwastewater levels of benzene, toluene, and xylene must be 10 mg/kg or lower, and levels of naphthalene and phenanthrene are set at 5.6 mg/kg. Because the K171 and K172 wastes each frequently contain reactive sulfides and as a result may exhibit self-heating pyrophoric properties, the Agency also listed reactive sulfides as one of the hazardous constituents of concern in these wastes and specifically proposed to apply deactivation to these wastes. Thus, EPA does not believe it is likely that generators can meet all applicable LDR standards without appropriate treatment, such as treatment at a recycling facility. EPA concedes that listing may increase costs for recycling, however, EPA is not convinced that costs for other forms of treatment and disposal would be appreciably less. In any case, EPA's decision to list these materials is based on the risks they pose, and how this listing may

ultimately affect competing treatment technologies is not a central issue in the Agency's decision.

Other commenters pointed out that current recycling of these catalysts has been due, in part, to the economics of reclamation compared to disposal. A listing would, however, disproportionately increase costs of and liability concerns about recycling. Some commenters noted that by listing these wastes, transportation costs will become a significant factor as materials will need to be transported as hazardous, regardless of their characteristics; increased transportation costs would strongly favor local disposal at a Subtitle C facility, and generators would be less likely to ship wastes farther distances to recycling facilities. Another commenter suggested that a listing will decrease recycling, and increase the demand for virgin metals. Thus, the overall environmental benefits from the listing determination are likely to be negative, because there will be more disposed of catalyst, and more production of virgin metals.

EPA cannot know precisely what the ultimate costs will be for refineries to recycle or dispose of spent catalysts. The Agency believes the liability concerns described will continue to play a role in both landfilling and recycling decisions upon promulgation of this listing. The affected industry must first explore means to eliminate or minimize the newly listed waste, and then to optimize recycling, treatment, and management of remaining wastes. The basis of EPA's listing decision, however, centers on the results of its risk assessment, which demonstrates that these materials pose a potential risk to human health and the environment, and warrant Subtitle C control. The Agency also points out that, because of the listing, the recycling/disposal cost differential may arguably be reduced or reversed, because Best Demonstrated Available Technology (BDAT) and Subtitle C disposal costs will greatly increase the costs of disposal over the current practice of Subtitle D landfills. Thus, recycling is likely to continue to be an effective management option for these residuals.

Furthermore, based on EPA's discussions with the recycling industry (see discussion of metal reclaiming for hydrotreating catalyst in Listing Background Document, 1995, pages 76–79), many of the reclaimers currently have RCRA storage permits to allow them to manage characteristically hazardous catalyst, so it is not clear that the costs for recycling should increase significantly due to listing. Even if recycling costs may increase as a result of this rule, EPA continues to believe that it is completely appropriate to bar these materials from Subtitle D disposal because of the risk levels identified through the Agency's risk assessment procedures. EPA has no evidence, nor did commenters provide any, to support the supposition that the listing would increase demand for virgin metals.

Many commenters requested that the Agency consider an exemption for the regeneration/reclamation/recycling of spent catalyst. The catalysts would be listed only if they are disposed of in a landfill (or, alternatively, not recycled). Other commenters proposed a conditional listing for catalyst residuals going to land disposal. The suggested conditions include that the residual is sent to metals reclaiming, catalyst regenerators, or other recycling or reuse (provided it is not a ''use constituting disposal''), records are kept on recycling and reuse, and that self-heating residuals are shipped in Department of Transportation (DOT) bins. The commenters argue that such a listing would encourage recycling rather than landfilling.

EPA believes that the catalyst wastes present several risks beyond those necessarily associated with landfill disposal, including pyrophoric properties and significant levels of benzene and arsenic (all of which may pose risks via pathways other than groundwater exposure, including risks from improper storage or other handling, and risks from uncontrolled air emissions from thermal treatment). Thus, this waste is not a good candidate for a conditional listing. Given the hazardous nature of this waste, EPA believes it is entirely appropriate for it to be transported and stored as hazardous waste before recycling. (See 40 CFR 261.6 for regulations applicable to hazardous wastes that are recycled). EPA points out that examples of problems at sites recycling these wastes have been noted in the record (see enforcement case described in the docket, document #PRA–S0037).

4. Catalyst From Sulfuric Acid Alkylation

Summary

The Agency is not listing as hazardous catalyst from sulfuric acid alkylation, as proposed. EPA hereby incorporates, as a final decision, the proposed preamble discussion for this waste stream at 60 FR 57768–57769. The residual is managed almost entirely (> 99 percent) under an existing exemption from the definition of solid waste (40 CFR 261.4(a)(7)). Also, this residual consistently exhibits the characteristic of corrosivity and is subject to regulatory control if not returned to the production of virgin sulfuric acid. No significant comments against this decision not to list were received during the public comment period. Therefore, EPA has no basis to change the decision not to list.

5. Spent Caustic From Liquid Treating

Summary

EPA is issuing a final decision not to list spent caustic from liquid treating as a hazardous waste. About 70 percent of the spent caustic is managed in ways that are exempt from RCRA regulation, because it is reused as an ingredient in producing other products. The Agency has identified certain management practices used for spent caustics for which the Agency is clarifying the application of the definition of solid waste, and in one case proposes a modification to the definition.

Almost all of the remainder is sent to regulated wastewater treatment systems in such small volumes relative to other discharges, that the diluted constituents of concern from the spent caustics are not expected to present any significant risk. Furthermore, any solids from the caustic that separate out prior to downstream biological treatment are already regulated as hazardous wastes.

After analyzing other potential exposure pathways, EPA concluded that with regard to any remaining risks, with the exception of air exposure pathways from open tank storage, there were no potential risk pathways that need to be modeled. EPA found that risks from air releases from the open tank storage scenario presented insignificant risk.

Moreover, this residual will frequently exhibit the characteristic of corrosivity (i.e., pH will be above 12.5) and toxicity due to cresol leachability (and sometimes ignitability) and is subject to all applicable regulatory controls when any of the hazardous waste characteristics are present.

Discussion

The Agency proposed not to list this waste as hazardous and has found no reason to change this decision after consideration of public comments and all other information available in the rulemaking record. EPA's 3007 Questionnaire showed that 51 percent of the waste stream is reused as an ingredient or substitute for virgin caustic and, is thus eligible for exclusion from the definition of solid waste under 40 CFR 261.2(e). The exclusion provides that secondary materials that are used or reused directly (i.e., without reclamation) are

not subject to regulation under RCRA and are therefore not subject to any listing determination. In addition, the proposal noted that characteristically hazardous spent materials that are reclaimed prior to reuse would still be hazardous wastes subject to pertinent management requirements. Therefore, as noted in the proposal and confirmed in this final decision, there is no reason to cover this portion of the waste stream in the listing.

In addition, 17 percent of the spent liquid treating caustics are used as valuable commercial feedstocks in the manufacture of cresylic or naphthenic acids. Accordingly, EPA in today's final rule, for reasons stated in the preamble to the proposed rule at 60 FR 57769–57770, is amending 40 CFR 261.4(a)(19) to clarify that spent caustics used in this manner are not solid wastes and, therefore, should not be subject to listing.

For the 29 percent of the wastes sent to wastewater treatment systems, EPA's analysis in the proposed rule found that risks from this practice are unlikely. As noted in the proposed rule, risks from such treatment are unlikely to be of concern because: (1) Treatment is already regulated under Federal water (NPDES) and air (benzene National Emissions Standards for Hazardous Air Pollutants (NESHAP), Maximum Air Control Technology (MACT) standards) programs; (2) sludges generated from wastewater treatment are already regulated as hazardous waste (i.e., K048, K051, F037, F038); (3) volumes of the discharged residuals under evaluation are relatively small in comparison to the volumes typically treated in wastewater systems; and (4) the wastewater treatment systems are designed to treat refinery wastes effectively (see discussion below).

The Agency concluded that there were no potential risk pathways that needed to be modeled except air exposure pathways from open tank storage. For open tank storage, the Agency's bounding risk assessment estimates resulted in no significant risks (see 60 FR at 57770). In addition, this waste consistently exhibits the characteristic of corrosivity (and often toxicity due to cresols), and, therefore, could not be otherwise discarded without being subject to regulation as a hazardous waste.

Specific Comments

In comments on the proposed rule, one commenter argued EPA only evaluated potential risks associated with tank storage, that EPA must evaluate the groundwater impacts from surface impoundment management, since that method of management is both an actual and plausible mismanagement scenario. The commenter stated that several refineries reported managing spent caustic in surface impoundments in 1992, and that the high-end volume of 596 MT managed in surface impoundments exceeds volumes EPA modeled for other waste practices. The commenter also noted that controls on surface impoundment risks by Phase III and Phase IV LDR rules cited by EPA in the proposal as being able to effectively regulate these wastes were not finalized.

In response, EPA wishes to clarify a few points. First, in every case described in the 1992 database, these surface impoundments were part of the refineries' wastewater treatment systems. EPA has no data indicating that undiluted caustics were managed in surface impoundments. Therefore, to model this scenario appears unreasonable. Second, EPA did, in fact, conduct a screening analysis of the impact spent caustic would have on the wastewater treatment plant, as described in the docket to the proposed rule, but found that the dilution with other process wastewaters was so great that no impact was observed (see page 152 of the Listing Background Document, 1995). In further considering this scenario, EPA estimates that the 90th percentile quantity of spent caustic discharged to wastewater treatment in 1992 (approximately 4,000 MT) would be diluted by a factor of about 3000. Thus, EPA does not believe that additional risk assessment is necessary. In addition, the constituents of concern (relatively low levels of certain volatile organics and metals, see the 1995 Listing Background Document for details) in these residuals are generally indistinguishable from those found in other residuals (many already listed as hazardous waste) typically discharged to wastewater treatment, making it virtually impossible to attribute any subsequent concentrations in sludges or environmental releases to the contribution from spent caustics. The combination of dilution and the expected toxicant removal and destruction that the wastewater treatment plants are designed to accomplish should effectively treat the spent caustic.

In addition, the Agency continues to believe that significant regulatory control of any spent caustic-derived treatment sludges already exists. Sludges and other residuals from the initial oil/water/solids separator are already regulated as K048 and K051. Sludges from oil/water/solids removal surface impoundments are also regulated as hazardous in the petroleum refining industry, through the F037/F038 listings. Clearly, risks associated with biological treatment sludges and wastewaters downstream from these units are reduced as a result of the prior removal and treatment, including biodegradation. Further regulatory controls also exist for these sludges and wastewaters via the TC. In addition, the benzene NESHAP (58 FR 3072, January 7, 1993) and the planned air standards for volatile organics emissions (MACT standards proposed in 61 FR 17358, April 19, 1996) provide regulatory mechanisms for control of air emissions, and wastewater discharges are covered by the NPDES program.

EPA does agree that it is no longer appropriate to rely on the regulatory controls originally anticipated via the Phase III and IV land disposal restrictions. The Land Disposal Program Flexibility Act of 1996 caused the Agency to withdraw the LDR Phase III treatment standards (see 61 FR 15660, April 8, 1996), and not to finalize the proposed LDR Phase IV provisions (see 62 FR 25997, May 12, 1997). However, as required under the Act, EPA is currently conducting a 5-year study of surface impoundment usage, and if the study indicates that risks from impoundments are significant, EPA will then consider the need for further regulatory controls.

One commenter noted that EPA's sampling indicates that spent caustic from liquid treating ''consistently exhibits'' a characteristic (the corrosivity characteristic, and TC for cresols and benzene), thus it should be listed as hazardous under EPA's listing criterion in 40 CFR 261.11(a)(1). The commenter argued that current regulatory control depends upon whether the particular waste exhibits a characteristic (a determination the generator can reach based solely upon his or her ''knowledge'' of the waste).

EPA agrees that this residual frequently and typically exhibits one or more of the characteristics. However, because the majority of caustic management practices are either exempt from regulatory control or are adequately regulated under other regulations (e.g., the characteristics), the Agency believes that listing as hazardous waste is not necessary. In response to the commenter's concern regarding knowledge that this residual exhibits a characteristic, EPA notes that this material is commonly acknowledged as corrosive due to its highly caustic nature (hence its name), and managed in a manner to minimize corrosion problems during storage. Thus, the Agency believes that generators of spent caustic are well

aware of the potential for this residual to exhibit hazardous waste characteristics, and manage their spent caustic accordingly. Given the existing regulatory controls and management practices for this waste, EPA continues to believe that listing is not warranted.

Several commenters believed that the use of caustics in the manufacture of cresylic acid and naphthenic acid has always been excluded from the definition of solid waste under 40 CFR 261.2(e)(1)(I) and that a promulgation of the proposed specific exclusion might indicate that up until now, these caustics have not been excluded. Thus, the commenters requested clarification.

In response, EPA notes that the Agency and several states have been involved in a longstanding discussion with industry regarding the regulatory status of these materials. The promulgation of this rule presents EPA's final findings, and is intended to put an end to discussions regarding possible ambiguities in the current rules. The purpose is to settle this matter once and for all, and we are doing so by providing a clear regulatory exclusion.

6. Off-Specification Product and Fines From Thermal Processes Summary

EPA is not listing as hazardous off-specification product and fines from thermal processes. No risks of concern were identified for those materials that actually are discarded. Most of the materials generated from these thermal processes are coke product and are stored in piles with other coke product before they are resold. These piles are not, therefore, subject to RCRA jurisdiction or they are exempt from RCRA regulations.

Discussion

The Agency proposed not to list these materials, which are generated from various refinery coking operations. Of the 194,300 MT of these materials generated, approximately 87 percent is collected and combined with product inventory to be sold. However, more than 7,250 tons (3.7 percent) are landfilled in on-site or off-site Subtitle D landfills. These discarded materials were the wastes on which the Agency conducted its risk assessment.

EPA determined that other management practices, including fines sent to wastewater treatment, would not serve as a basis for listing and adopts the reasoning in the proposal for this determination as part of its final decision. (See 60 FR at 57770–57771). In summary, fines sent to wastewater treatment are insoluble and will be incorporated in primary treatment sludges that are already listed as K-and F-wastes; LTUs received very small waste volumes; and other management practices do not actually isolate the materials from the coking process and, thus, are not wastes.

Commenters questioned why EPA did not assess risks from coke fines placed on piles of coke product, arguing that the waste does not become a product simply because it is placed on the pile and combined with another material. In the NODA, EPA provided further clarification on the jurisdictional basis for not evaluating the majority of off-specification product and fines that are managed as coke product. The Agency explained that only particle size distinguishes coke fines from other coke product. The majority of coke is removed from the coker by hydraulic drilling and coke fines are merely the smaller pieces of coke generated during this process.

In addition, EPA explained there is a jurisdictional distinction between coke fines produced from non-hazardous materials and coke fines produced from hazardous wastes (waste-derived fines).[24] Fines generated from non-hazardous materials are simply coke product, as would be expected because they are produced from the same coking drum. In the case of waste-derived fines, so long as the fines are legitimate coke product, they are exempt from RCRA regulation unless the material exhibits a characteristic as provided in 40 CFR 261.6(a)(3)(v). (See also RCRA section 3004(q)(2)(A)). EPA had no information that waste-derived coke fails any hazardous waste characteristic. The Agency invited comment or data to the contrary but received none.

In any event, EPA determined that the use of hazardous waste in the production of coke would result in little, if any, change to the qualities and the properties of the coke and fines produced. These coke fines would have essentially the same composition as fines generated from non-hazardous feed materials. The waste-derived fines are combined with other coke in a product pile for storage prior to sales and are coke product. The NODA also provided additional analyses on the similarity of coke fines to existing coke product, and the potential impact of recycling hazardous waste to the coker.

EPA has no reason to change this jurisdictional determination or the determination that management scenarios other than Subtitle D landfilling could not serve as a basis for listing. Therefore, the Agency adopts these determinations as part of the basis for issuing the final decision not to list this waste stream as hazardous.

With respect to the Subtitle D landfilling scenarios EPA evaluated for the off-specification product and coke fines that were discarded, EPA notes that groundwater risk estimate of 1E–5, as well as the revised high-end risks in the NODA of 5E–6 to 2E–5 were within the Agency's initial risk level of concern.

However, EPA noted significant problems with the groundwater risk assessments. First, this risk was based entirely on the detection of one PAH, benzo(a)anthracene, in only one out of six leaching samples at a level 8-fold below the analytical quantification limit. Thus, EPA had low confidence in this value and the subsequent modeling based on this number. Second, the water solubility of this chemical is also very low, indicating that its aqueous concentration is likely to be very low. Third, this chemical is tightly adsorbed to organic material in soils and sediment, indicating that the constituent is relatively immobile in groundwater.

The NODA analysis, therefore, led EPA to determine that it is highly unlikely that this waste would present a significant risk in a groundwater scenario. EPA finds no reason to change that determination either based on NODA comments or any other information in the rulemaking record. In addition, further assessments in the NODA showed no significant risks from the relatively small volumes that were disposed in LTUs.

EPA's decision not to list is further supported by additional analysis after comments received on the NODA. In its reexamination of the groundwater analysis EPA found that it had mistakenly used the wrong carcinogenic risk factor for benzo(a)anthracene. As shown in Table IV–2, when the revised groundwater analysis was performed with the longer active life and municipal landfill areas, using the correct health-based number caused the risks to drop 20-fold, such that even the maximum high-end risk was 2E–6. See Additional Groundwater Pathway Analyses, 1998, contained in the public docket for this rule for details. Given the even lower groundwater risk calculated, still using the suspect benzo(a)anthracene measurement, EPA finds even further reason to believe that the listing of off-specification product and fines is not warranted.

Specific Comments

One commenter claimed EPA data indicates that several respondents store

[24] See the discussion on oil-bearing hazardous secondary materials inserted into the petroleum refining process, including the coke, in today's preamble for modifications to the definition of solid waste concerning these materials.

off-specification products and fines in surface impoundments as an ''interim'' management method, and therefore the Agency should model this management. In response, EPA finds only one respondent, not several, that reported managing off-specification product and fines in a ''surface impoundment'' in 1992. This ''surface impoundment'' acts as a drilling water clarifier. All delayed coking units recycle their drilling water, and to do so, any entrained fines in the drilling water must be recovered. Typically, the concrete coke storage pad is sloped so that drilling water drains to one end and proceeds through a series of baffles that separate out the coke fines. This is the type of ''surface impoundment'' the refinery identified. Thus it is not a typical surface impoundment, but rather an integral part of the decoking process. These are lined (concrete) drilling water collection and recycle systems, confined within the coke battery, and are unlikely to pose significant risk.

Comments related to the aspects of the groundwater modeling are discussed earlier in this notice (see Section V.B.6); however, EPA makes several points for this specific wastes. Regarding the commenters' criticism of EPA's use of TCLP results as input values to the landfill groundwater modeling for this material because it is ''oily,'' the Agency points out that off-specification product and fines are generally not oily. The Agency conducted total oil and grease analyses on four samples and the average level of oil and grease (measured as Total Oil and Grease, i.e., not truly ''free'' oil) was two percent (three samples were below one percent). Furthermore, the data from the 3007 Questionnaire show that the typical material has relatively low oil content (90th percentile value was five percent). Therefore, EPA believes that the use of the TCLP was valid.

With regard to commenter concern over free-phase flow of contaminants from off-specification product and fines due to oil content, it is particularly important to note that none of the six off-specification product and fines from thermal processes samples exhibited multi-phase behavior, and that the measured oil content was low, as noted above.

The commenter went on to state that a risk assessment EPA conducted for this waste as part of the 1995 proposal showed that risks associated with air releases from uncovered landfills made up of coke fines exceeded 1E–3 for home gardeners, subsistence farmers, and subsistence fishers, and a high risk to subsistence fishers from mercury exposure was also predicted. The commenter also noted that the NODA risk modeling for disposal in LTUs was not a meaningful surrogate for evaluating the risks posed by pile storage, because the annual volumes modeled were small (high-end volumes of 21–34 MT).

The commenter is attempting to use a bounding analysis EPA undertook for nongroundwater risks for coke fines disposed in landfills as an indication that air releases from piles containing this material would present similar risks. In response, EPA first notes that bounding estimates are used as an initial screening estimate that overestimates the exposure or dose for the purpose of screening out exposures of little concern. The purpose of the bounding analysis is simply to determine what pathways and scenarios require further evaluation and does not represent an assessment of risks. The bounding analysis included worst-case assumptions (no cover or dust suppression, highest constituent levels, largest waste volumes and landfill area, worst climate, etc). Furthermore, the levels near 1E–3 arose from indirect pathways (ingestion of beef, dairy, fish, and plant products); the direct pathway of soil ingestion, even in the bounding analysis, was on the order of 1E–6. Most importantly, the biotransfer factors used in the bounding analysis for beef, dairy, and plant indirect paths have been determined to overestimate risks by at least two orders of magnitude; likewise the apparent problem from mercury also was traced to an error in units for the bioaccumulation factor used. Thus, EPA believes that the bounding analysis was flawed and grossly overestimated risks.

EPA notes that the subsequent high-end analyses for nongroundwater risks from landfill disposal of off-spec product and fines did not show significant risk. While the high-end analysis included the assumption of daily cover for the landfill, and thus may not be the best surrogate for air releases from piles, the scenario did consider windblown dust from on-site roads and particulate release caused by traffic (i.e., dump trucks), loading, unloading, etc. The high-end analysis showed risks no higher than $2x10-6$ for any receptor (see U.S. EPA, Assessment of Risks from the Management of Petroleum Refining Wastes Background Document (F–95–PRLP–S0006), page 10–3). Therefore, some of the possible release mechanisms that could occur in a waste pile scenario (e.g., unloading/loading, traffic) were addressed in the risk assessment supporting the proposal and the pathway was not significant.

EPA also points out that some important characteristics of the coke pile and details of management practices used by refineries would tend to mitigate potential risks. The piles are not comprised simply of coke fines, but are mixtures of much larger pieces of coke product that are drilled from coker units; the larger chunks of coke would make up the bulk of the pile. Furthermore, coke is drilled out of the coker approximately once a day with hydraulic drills; thus, new wet coke/fines from drilling are added to the coke pile, making air releases of dry particulates less likely. EPA also has found that coke piles are managed using various practices to control release of dust, including: (a) Contained product storage areas (b) dust-suppression water spray systems (c) covered conveyor systems and, (d) direct loading from coke-drums into railcars (see NODA response to comment document for a summary of these practices). In addition, EPA expects that particulate releases from these areas would be controlled by Federal, State, or local air regulations and permit programs.

Finally, the commenter also argued that, pursuant to the Consent Decree in *EDF* v. *Browner*, EPA is required to issue a listing determination for off-specification products and fines, and that because piles present a substantial risk to human health and the environment based upon the assessments conducted to date, the required listing determination must include a decision as to whether off-spec products and fines warrants listing pursuant to 40 CFR 261.33 as a commercial chemical product. The commenter suggested that, if EPA argues that the piles of coke fines are product, then the material that blows off the piles and cannot be recovered is discarded commercial chemical product and should become a listed U-waste under 40 CFR 261.33(f).

EPA disagrees with the commenter. The Agency has, in fact, made a listing decision for the off-specification product and fines that are known to be discarded by refineries, i.e., the volumes of wastes that are disposed. EPA believes it has fulfilled the requirements of the consent decree for production wastes from petroleum refining. While the Agency is not constrained to making decisions required under the consent decree, EPA is not making a listing decision on product use in this rulemaking. Furthermore, at this time the Agency has no valid assessment that indicates these wastes present a ''substantial risk'' when added to coke piles.

7. Catalyst and Fines From Catalytic Cracking

Summary

As proposed, EPA is not listing as hazardous Fluidized Catalytic Cracking (FCC) catalyst and fines. Two subcategories of this waste were evaluated due to their physical difference in particle size: spent equilibrium catalyst and catalyst fines. The usual constituents of concern found in other petroleum residuals (i.e., carcinogenic PAHs and benzene) were not detected in spent FCC catalysts. More than 70 percent of the equilibrium catalyst and 20 percent of the catalyst fines are reused (in other FCC units) or recycled (primarily by cement plants). For the reasons stated in the proposal, the Agency chose to model the monofill and surface impoundment scenarios (see 60 FR at 57771) for FCC catalyst and FCC fines. Bounding estimates (run under worst-case assumptions using multiple high-end assumptions for critical parameters) for the nongroundwater exposures from volatile and particulate emissions from monofills showed no significant risk for either FCC equilibrium catalyst or FCC fines. The Agency also found no significant risk, for either subcategory, from the high-end analysis for the groundwater pathway from the monofill or surface impoundment scenarios. Furthermore, the revised risk analyses in the NODA in response to comments showed no significant risks for this waste. The few comments EPA received on this waste agreed with EPA's decision not to list. Therefore, the Agency continues to believe that a no-list decision is warranted and adopts that final decision incorporating the reasoning in the preamble to the proposal.

8. HF Alkylation Sludge

Summary

The Agency is not listing as hazardous sludge from hydrofluoric acid (HF) alkylation processes. As noted in the proposal and confirmed by analysis of comments and all other relevant information in the record, only marginal risk was identified for the groundwater ingestion pathway in off-site landfilling due to benzene. Also, no significant risks were found from land treatment of this material.

Discussion

In the proposal, EPA found a high-end groundwater risk for landfills of 3E–6 due to benzene (see 60 FR at 57772). The Agency also noted that benzene was found in only one out of five TCLP samples, indicating that the risk attributed to this chemical would generally be lower. EPA did not model other waste management practices because they were already regulated under RCRA (e.g., combustion in a industrial furnace), extremely rare (discharge to a surface impoundment that has been closed), recycling practices (on-site recovery), and/or would present no significant risk (discharge of small volumes to wastewater treatment systems).

In the NODA, the Agency revised the groundwater risk analysis for landfill disposal and found slightly higher high-end risks for groundwater for off-site and on-site landfills (both 6E–6) due to benzene. EPA also presented a groundwater Monte Carlo analysis in the NODA that showed risks of 2E–7 for on-site, and 2E–6 for off-site landfills. Revised nongroundwater risks from disposal in LTUs remained insignificant (less than 1E–7; see 62 FR at 16753).

Further groundwater pathway analysis performed in response to comments on the NODA showed a slight increase in the high-end risk to 1E–5 for off-site landfills. The revised Monte Carlo analysis yielded no change in the risk (2E–6). (See Table IV–2, and Additional Groundwater Pathway Analyses, 1998, contained in the public docket for this rule).

EPA decided not to list this waste based on the relatively low groundwater high-end risks of 1E–5 due solely to benzene, and the fact that benzene is not frequently found in the TCLP analysis (one of five samples). Furthermore, this waste typically does not have high oil or PAH content; none of the carcinogenic PAHs were detected in the samples collected by EPA. Therefore, the Agency is issuing a final decision not to list this waste stream.

Specific Comments

The Agency received comments arguing that sludges from HF alkylation are frequently generated and managed in surface impoundments and were not evaluated by EPA because it is a ''rare'' management practice. The commenter stated that there are an ample number of surface impoundments at refineries that could be used in this manner, there is no legal or other barrier to surface impoundment management of HF alkylation sludge, and that this practice should be considered a plausible management scenario. The commenter noted that the waste is sometimes generated in ''pits,'' and this means management in an impoundment is a reasonable assumption.

EPA disagrees with the comment that HF sludge is commonly generated or managed in surface impoundments. From site visits, EPA found that HF alkylation sludge is commonly generated in concrete lined pits or tanks within the HF process unit boundary; these are not unlined surface impoundments. The one case of actual management of this waste in a surface impoundment in 1992 was reported to be discontinued that year (see Listing Background Document, October, 1995). Therefore, EPA does not believe management in surface impoundments is plausible.

One commenter criticized EPA's modeling of risks from LTUs, and these are addressed elsewhere in today's notice (see Section V.B.7). However, EPA would like to note that nongroundwater risks are unlikely to be significant for this waste because HF alkylation sludge has none of the carcinogenic PAHs that were of concern for other wastes. For example, while CSO sediment samples had an average of 132 ppm of the PAH benzo(a)pyrene, none was detected in any sample of HF alkylation sludge.

One commenter argued that EPA should list this waste based on the groundwater risks estimated by EPA, as well as the risk calculated by the commenter using alternative groundwater modeling (2E–5). EPA disagrees with the commenter, and continues to believe the risks do not justify listing this waste. As noted in the discussion above, EPA's revised high-end risk was 1E–5, and the revised Monte Carlo risk only 2E–6. EPA has decided not to list this waste after considering other factors. Most importantly, the risk was due to the presence of one constituent, benzene, that was detected in only one of the five TCLP samples. Thus, the constituent was not found frequently or typically in this waste. Furthermore, EPA found none of the carcinogenic PAHs in samples of this waste that were so pronounced in other wastes of concern (e.g., CSO sediment).

9. Sludge From Sulfur Complex and Hydrogen Sulfide Removal Facilities

Summary

As proposed, the Agency is not listing as hazardous sludge from sulfur complex and hydrogen sulfide removal facilities. No significant risks were found for any exposure pathway from disposal in on-site or off-site landfills, or in on-site and off-site LTUs, nor from potential air releases from storage in dumpsters (well below 1E–6 in all cases). In addition, the Agency noted that the sludges that may be generated from treatment of this waste in the

primary wastewater treatment system are already listed. Furthermore, the revised high-end risk analyses in the NODA in response to comments also showed no significant risks for this waste (well below 1E–6 in all cases). The few comments EPA received on this waste agreed with EPA's decision not to list. Therefore, the Agency continues to believe that a no-list decision is warranted and adopts the final decision incorporating the reasoning in the preamble to the proposal.

10. Catalyst From Sulfur Complex and Hydrogen Sulfide Removal Facilities

Summary

The Agency is not listing as hazardous any of the spent catalysts generated from H_2S removal and sulfur complex operations. The Agency divided this residual into two subcategories: Spent Claus unit catalyst, and spent SCOT-like tail gas catalyst. For the first subcategory, no significant risks were found from bounding estimates (run under worst-case assumptions using multiple high-end assumptions for critical parameters) for the groundwater exposure pathway as well as for the direct and indirect pathways of volatile emissions and particulate emissions. For the second subcategory, the Agency also did not find significant risks associated with the disposal of this waste in on-site and off-site landfills. Furthermore, the revised risk analyses in the NODA in response to comments continued to show no significant risks for this waste stream. Therefore, the Agency continues to believe that a no-list decision is warranted and adopts the final decision incorporating the reasoning in the preamble to the proposal.

11. Unleaded Gasoline Storage Tank Sediment

Summary

EPA is not listing as hazardous sediment from the storage of unleaded gasoline in tanks. The Agency assessed the potential risks associated with four selected management practices, on-site and off-site Subtitle D landfilling, and on-site and off-site land treatment. Only marginal risk was identified for the groundwater ingestion exposure pathway. Although revisions to the risk assessment showed higher risks above the level of concern, EPA has still decided not to list this waste because: (1) The waste is primarily rust and scale and has none of the carcinogenic PAHs or high oil content of potential concern in other wastes, (2) the TC is expected to control some risks, (3) the volume of waste is relatively small, and (4) the reduction of benzene levels in reformulated gasoline should reduce levels in wastes in the future.

Discussion

EPA proposed not to list unleaded gasoline tank sediment as hazardous due to the absence of any significant risks, except for the marginal risks found for the groundwater ingestion pathway for off-site landfill disposal (high-end risk, 2E–6). The Agency also noted that this waste was infrequently generated, volumes of this waste disposed were relatively modest, and that the only constituent of concern, benzene, would be controlled by the TC.

The revised modeling completed by EPA in response to comments on the proposal and the NODA included a full sensitivity analysis to determine the most critical high-end parameters, and resulted in off-site landfill groundwater risks increasing to 3E–5 (see Table IV–2). The high-end risk was lowered slightly to 2E–5 in the TC-capped results. However, the revised Monte Carlo risk, 6E–6, is below EPA's level of concern (1E–5), and the TC-capped Monte Carlo risks drop to 4E–6, suggesting the TC may control most risks of concern for this waste. After considering these risk results, and the other factors discussed below, EPA finds that the listing of this waste is not warranted.

First, while the levels of benzene in the waste and TCLP samples are of potential concern, the TC for benzene should provide some measure of control of wastes with high benzene levels. Nearly 40 percent (52) of the 141 unleaded gasoline tank sediment wastes streams generated in 1992 were reported in the 3007 Questionnaire to be coded as hazardous waste (due primarily to the TC for benzene and occasionally for ignitability). While EPA's risk analysis using TCLP input data capped at the TC level still showed some risk (2E–5), many of the wastes that are not TC-hazardous will likely have benzene levels below the TC level. Thus, given the existing regulatory control afforded by the TC, the incremental benefit to listing this waste appears limited.

Furthermore, this waste does not have the features that EPA found compelling in deciding to list other wastes examined in this rule. Specifically, this waste lacks the pyrophoricity and arsenic concerns exhibited by the spent catalysts, and it has low oil content and PAH levels compared to the crude oil and CSO tank sediments. The oil content of this waste is typically low as evidenced by the median TOG levels reported in the 3007 Questionnaire (6 percent), and samples taken by EPA (<1 percent). This contrasts with much higher TOG levels in Crude Oil Storage Tank Sediment (34 percent average from the 3007 Questionnaire, and 21 percent average from the six samples EPA analyzed) and CSO Tank Sediment (30 percent average from the 3007 Questionnaire, and 37 percent average from EPA's samples). EPA's analyses of samples of unleaded gasoline storage tank sediments also showed none of the carcinogenic PAHs that were of concern in sediment from CSO and crude oil tanks. For example, average benzo(a)pyrene levels found in sediment from CSO and crude oil storage were 132 ppm and 12 respectively, but none was found in sediment from unleaded gasoline storage. In addition, one of the major constituents measured in the unleaded gasoline tank sediment was iron (*e.g.*, the average iron level for the three samples was 41, thus this waste appears to be largely rust and scale, rather than the higher organic content of the other tank sediments. Therefore, EPA is more confident that the other constituents of gasoline tank sediment will not present any potential problem.

Also, as noted in the proposed rule, the total volume of the waste reported for 1992 is relatively small (3,583 MT), and the volumes sent to landfills are even smaller (633 MT, 22 MT average per waste stream). These volumes are significantly smaller than the volumes of crude oil storage tank sediment generated (22,017 MT) and sent to landfills (2,338 MT, 123 MT average).

Finally, EPA has promulgated regulations under the Clean Air Act (CAA) that will result in the reduction of benzene levels in gasoline (see the Reformulated Gasoline Rule, February 16, 1994; 59 FR 7716). This rule sets a 1.0 percent (by volume) benzene limit on reformulated gasoline for non-attainment areas of the United States. In conventional gasoline, benzene is incorporated into gasoline to increase the octane rating, and the average amount of benzene in conventional gasoline is 1.6 percent, ranging up to 5.0 percent. Therefore, as the levels of benzene in gasoline are reduced, sediment from storage of gasoline should also show a corresponding reduction in the levels of benzene. This will reduce the potential groundwater risks resulting from benzene in unleaded gasoline storage tank sediment.

Specific Comments

One commenter noted that EPA did not model the use of unleaded gasoline tank sediment waste as landfill cover or road spreading. In response, the Agency

points out that no refineries reported use of unleaded gasoline tank sediment as landfill cover or in road spreading. The Agency has no data supporting these management scenarios and therefore does not see the need to model this pathway.

While the Agency already discussed the general issues related to the appropriateness of the TCLP for the wastes examined in this rulemaking due to oil content, EPA notes that for this specific waste the total oil and grease levels in the available samples collected by EPA were well below 1 percent. Thus, the commenter's concern about problems with the TCLP and oily waste are clearly unfounded for this waste.

One commenter criticized EPA's modeling of risks from LTUs, and these are addressed elsewhere in today's notice (see Section V.B.7). However, EPA would like to note that nongroundwater risks are unlikely to be significant for this waste under any scenario because unleaded gasoline tank sediment has none of the carcinogenic PAHs that were of concern for other wastes, such as CSO.

One commenter argued that EPA should list this waste based on the groundwater risks calculated by the commenter using alternative groundwater modeling (8.8E–5). EPA disagrees with many of the commenter's suggested modifications to the modeling (see Section V.B.6) and continues to believe that the risks do not justify listing this waste. As noted in the discussion above, EPA's revised high-end risk was 3E–5, and the revised Monte Carlo risk was 6E–6 (see Table IV–2), and after considering the other factors noted, EPA has decided not to list this waste. Furthermore, the revised Monte Carlo risks for this waste were 6E–6, below EPA's 1E–5 level of concern. In addition, the Monte Carlo TC-capped risk of 2E–6 suggests that the TC will be effective in controlling much of the risk for this waste.

12. Catalyst From Reforming

Summary

The Agency is not listing as hazardous spent catalyst from reforming operations, as proposed. The proposal noted that 94 percent of the wastes generated in 1992 were recycled at reclamation facilities for the precious platinum content. The remaining 6 percent consist primarily of other materials generated during catalyst replacement, *e.g.*, ceramic support media that are inert. The Agency conducted risk analysis of the potential air exposure pathway from the combustion of the reforming catalyst prior to reclamation, and no significant risk was found from this pathway. In addition, the Agency believes generator site environmental release other than potential de minimis spills would be unlikely because the valuable spent reforming catalysts are controlled and tracked between the refining and reclamation facilities to prevent loss. The one comment EPA received on the Agency's assessment agreed with the decision not to list. Therefore, the Agency continues to believe that a no-list decision is warranted and adopts the final decision incorporating the reasoning in the preamble to the proposal.

13. Sludge From Sulfuric Acid Alkylation

The Agency is not listing as hazardous sludge from sulfuric acid alkylation. In the proposal, the Agency noted that this waste was infrequently generated, and the volumes generated in 1992 were very small (608 MT). Based on the bounding estimates (run under worst-case assumptions using multiple high-end assumptions for critical parameters) conducted for land treatment and landfilling practices, no significant risk was found. Furthermore, the revised land treatment risk analyses in the NODA in response to comments showed no significant risks for this waste stream. Therefore, the Agency continues to believe that a no-list decision is warranted and adopts the final decision incorporating the reasoning in the preamble to the proposal.

D. Headworks Exemption

As noted in Section III.A in the proposed rule, EPA proposed to extend the existing exemption for wastewaters from cleaning of petroleum tanks to include those generated for CSO tank sediment, and if listed, crude oil storage tank sediment. In the NODA, EPA proposed to extend the exemption to include wastewaters generated from the clean out of processing units holding spent hydrotreating and hydrorefining catalysts.

1. Application to Listed Catalysts

Many commenters requested clarification that the headworks exemption would include wastewaters from spent hydrotreating and hydrorefining catalysts. This would allow refiners to continue the practice of using water to cool and wash out these spent catalysts from the process units prior to further management. One commenter stated that sufficient controls are in place within refineries to manage minor residuals that are drained to the refinery sewer systems. These residuals will be removed in the system and become listed hazardous wastes. Without these exemptions, refiners would be forced to either use more costly or more dangerous methods in managing catalyst or be forced to collect and ship these wash waters off-site.

As described in the NODA, EPA considered the commenters' request and conducted an assessment to determine the appropriateness of expanding the headworks exemption. The results of this analysis show that little risk is likely to be incurred by this practice. The use of water during the catalyst changeout process provides a number of benefits, including lowering emissions of volatile organics (if the wash water is treated to remove volatiles prior to discharge to the sewer system), lowering the risks associated with the catalysts' potential self-heating nature, and minimizing risk to workers entering the confined space of the catalytic reactors during changeouts. Therefore, EPA, has concluded that it is appropriate to include this low risk, beneficial practice under the headworks exemption.

Many commenters approved of expanding the proposed headworks exemption to cover water associated with catalyst management. These commenters saw the exemption as consistent with EPA's listing criteria in 40 CFR 261.11(a)(3), and agreed with EPA that the exposure pathways from wastewater management associated with CSO sediment and hydroprocessing catalysts in the refinery wastewater treatment system are sufficiently regulated under the Clean Water Act (CWA), the CAA NESHAP, and the existing RCRA hazardous waste listing for refinery wastewater treatment sludges (K048, K051, F037, and F038).

EPA agrees that existing NESHAP and effluent guideline controls on these materials, as well as the existing sludge listings (F037, F038, K048, K051), and the inherent differences between the wastes modeled and the aqueous residuals generated during tank and unit washings, support EPA's decision to finalize the headworks exemption.

2. Clarification of Scope

EPA received a request for clarification about whether the proposed exemption is limited to dilute wastewaters resulting from the cleanout of tanks or other units containing these wastes, or whether the proposed exemption applies to the listed waste (sediment) itself. One commenter stated that the exemption would be abused and would encourage wholesale discharge of the sediments to the wastewater treatment system. EPA

reiterates that the headworks exclusion is not meant to serve as an incentive to discharge tank sediments (or spent catalyst) to the wastewater treatment plant. This was not the Agency's intent, and EPA requested comment in the NODA on how to ensure that the headworks exemption is not a loophole to dump catalyst or CSO sediment in the sewer.

One commenter argued that the exemption would not be a loophole for two important reasons. First there would be a significant economic penalty for this action, because solid material dumped in the sewer will emerge again as hazardous waste sludges upstream of biological treatment (F037, F038, K051 and K048). The commenter stated that any wastewater sludge that these solids generate would likely be many times the original weight of the solids in the water (up to 10-fold due to the oil water-bacteria emulsion that forms around these solids). The commenter claimed that the increased costs associated with increased volumes of difficult to manage emulsions would be a severe economic penalty for allowing excess solids into a sewer. Secondly, the commenter noted that sewers are critical to a refinery's operation, such that any discharge of solids into a sewer runs the risk of interrupting refinery operations (with heavy costs), or at least overloading the system with solids, endangering compliance with water discharge permits. Therefore, the commenter concluded there is no need for EPA to further define allowable wastewater solids content, and this would only create unneeded analytical, record keeping, and related compliance burdens.

The Agency agrees with this commenter that there are financial disincentives to discharging excess solids to the refinery wastewater treatment system. Furthermore, the Agency observes that many refineries conduct deoiling of tank contents and sediments prior to disposal and tank inspection. This practice reduces sediment quantities by an average of 40 percent, with a substantial savings of raw materials (*i.e.*, oil recycled back to the refining operations) and disposal costs. Upon promulgation of today's listings and the exclusion for oil-bearing residuals, EPA believes even greater amounts are likely to be subjected to oil recovery and waste minimization. Any water in the tank clean out material will likely be separated as a part of the deoiling process, and would be discharged to the wastewater treatment plant. Thus, with respect to some commenters' concerns regarding impacts on the wastewater treatment system, these recycling activities will likely increase and further reduce the load on the treatment system.

A commenter asked EPA to clarify the scope of the exemption in the final rule, since water is used in any number of different ways in the proper handling of CSO sediment and spent hydroprocessing catalysts. They stated that EPA should clarify in the final rule that the exemption extends to all wastewaters derived from the management of the residuals, as long as the wastewaters are managed in a system subject to the Clean Water Act.

EPA is aware of the following uses of water associated with the generation of K169 to K172. In reference to crude oil storage and CSO tank sediments (K169 and K170), wastewater is generated (1) by dewatering (*e.g.*, centrifuging) sediment removed from the tank, and (2) by conducting a ''rinse'' as mentioned by the commenter. In reference to K171 and K172, wastewater is generated from drilling out the catalyst, steam stripping or washing, and pad drainage.

EPA believes that the headworks exemption is appropriate for waters generated from all of these practices, because these aqueous residuals would be dilute and contain low levels of the original listed wastes. Therefore, the Agency is finalizing the exemption for all the wastes that are being listed: CSO sediment, crude oil sediment, spent hydrotreating catalysts, and spent hydrorefining catalysts. As noted in the proposal, however, the exemption is not intended to allow the discharge of the entire waste stream (*i.e.*, tank sediments or spent catalysts), but rather dilute waters generated during tank or unit clean outs and dewatering.

Another commenter requested clarification that the headworks exemption extends to zero discharge facilities that have CWA equivalent wastewater treatment units. The Agency wishes to clarify that the exemption would extend to facilities subject to regulation under section 402 or section 307(b) of the CWA and would include facilities that have eliminated the discharge of wastewater. However, this clarification is already included in the regulations in 261.3(a)(iv) and specifies that wastewaters at facilities that have eliminated discharges are included.

Facilities that elect to use the headworks exemption should understand the potential compliance implications for Subpart FF, the benzene waste operations NESHAP, (40 CFR 61.340). Subpart FF conditions the need for air pollution controls and waste treatment on the total annual benzene quantity (TAB) from a facility's waste. Facilities must include any waste stream ''that has a flow-weighted annual average water content greater than 10 percent or that is mixed with water or other wastes at any time and the mixture has an annual average water content greater than 10 percent.'' Since 1995, refineries with a TAB of 10 MT per year or greater must treat all benzene wastes and control emissions from drains, sewers, tanks, oil-water separators, impoundments, and containers. Thus, if facilities elect to use the headworks exemption, any wastes put in sewers that did not previously count toward the TAB will have to be included in TAB calculations. If refineries have TAB that exceeds 10 MT/yr, they would be out of compliance with Subpart FF.

3. Comments Opposing the Exemption

One commenter urged the rejection of EPA's proposal to exempt from regulation previously listed refinery wastes (K050), CSO residuals, and crude oil storage tank sediment, because it encourages waste constituent volatilization and dilution, rather than pollution prevention and responsible waste management. The commenter noted that EPA's sole justification for the proposal was the Agency's belief that the hazardous constituents in these wastes would wind up in RCRA regulated wastewater treatment sludges. The commenter asserted that EPA failed to address why hazardous constituents in the discharges would not be released into the air, or remain in the wastewater and bypass the primary sludge only to settle in the unregulated treatment sludges further down the treatment train.

As noted earlier in today's notice (see discussion on Waste Management Assumptions in Section V.B.2), EPA does not believe that discharges to wastewater treatment systems are likely to present significant risks. EPA also notes it did not find air releases of volatiles, such as benzene, to be a significant risk for any of these wastes for any disposal practice evaluated. Thus, EPA does not believe that any air releases from a much more dilute waste generated during tank or unit clean outs are likely to present significant risk. The Agency notes that the benzene NESHAP (58 FR 3072; January 7, 1993) provides significant control of emissions from the wastewater conveyance system at larger refineries, and that the reported amount of sediments managed in this manner is small relative to the total volume of waste being given this exemption. Refineries also avoid overloads to their biological treatment trains in order to maintain their effectiveness.

EPA also notes that the discharge of aqueous wastes generated during tank cleaning are generated only infrequently. EPA's data from the 3007 Questionnaire, shows that, on average, a single CSO tank is cleaned every 9 years and, on average, a refinery has four tanks containing CSO (for those that generate the residual). Therefore, a typical refinery generates CSO tank cleaning wastewaters less than once per year. Discharges of tank cleaning waters are infrequent and are expected to generate relatively small volumes of water in comparison with the typical wastewater flow through a refinery treatment system (see analysis noted below).

Tank cleanings are used to facilitate tank inspections, which are critical to ensuring tank integrity and to avoiding catastrophic tank failure. Without this exemption, tank washing would become much more difficult because of the need to find alternative Subtitle C disposal methods for these wastewaters. Also, the tank washings are dramatically different in nature from the sediments characterized for the listing determination. While these washes are primarily water, the sediments are primarily solid, subject to land disposal methods such as the landfilling and land treatment evaluated in EPA's risk assessment.

To respond fully to this commenter, EPA presented a further analysis in the NODA to illustrate the magnitude of treatment and dilution that would occur at the headworks of a refinery for both CSO tank sediment and spent hydrotreating/hydrorefining catalysts. (See Sections 8 and 9 in Supplemental Background Document-Listing Support Document, March 1997). EPA notes that it completed a similar analysis for crude oil storage tank sediment to respond to the commenter's concerns expressed about this waste also (see Additional Listing Support Analysis, 1998 in the docket). EPA concluded from these analyses that any impact on the downstream wastewater treatment sludge or wastewaters would be negligible.

Comments on the NODA analysis for the headworks exemption argued that EPA based the assessment for CSO sediment on disposal of the waste itself in the wastewater treatment system, and that the exemption should be limited to dilute wastewaters. The commenter suggested that EPA set limits on maximum concentrations for contaminants in discharges, and limit the exemption to rinsate from the cleaning of tanks or other units. The commenter stated that these limitations should also apply to the existing exemption for heat exchanger bundle cleaning sludge, currently listed as hazardous waste K050, because the existing exemption suffers from the same flaws as the proposal. The commenter also indicated that if EPA does not limit the exemption to rinsate, the CSO assessment is flawed because it was based on the waste volume of the one facility reporting waste discharge into a wastewater treatment system in 1992. The commenter recognized that the facility no longer intends to employ the practice, but argued the potential exists for any generator of the waste to do so.

In response, EPA notes that the purpose of the NODA exercise was to develop a ''what if'' scenario, representing the extreme case of CSO washwater loading to wastewater treatment. EPA concluded that because its ''what if'' scenario showed negligible risk, then no specific restrictions on washwater composition would be required. Furthermore, as discussed above in this section, EPA believes that there are significant disincentives for refineries to discharge high solids content waste to their wastewater treatment system. Finally, EPA notes that the existing exemption for heat exchanger bundle cleaning sludge (K050) was not explicitly reopened for comment, therefore the Agency is not considering any modification of this exemption in today's rule.

Certainly, on-site wastewater treatment systems are available for this purpose throughout the refinery industry. EPA based its evaluations on the actual waste quantities used in particular management scenarios. EPA has no reason to believe, for example, that a quantity of waste destined for land treatment would be managed in a wastewater treatment system. EPA points out that a significant fraction of the wastes being listed must already be handled as hazardous, because they exhibit the TC or other characteristics. Yet despite this apparent incentive to avoid costly Subtitle C management, the disposal of tank sediment directly into the wastewater treatment system was extremely rare (i.e., only once each for CSO and crude oil storage tank sediments).

The commenter also questioned whether the Agency accurately estimated the impact posed by the exemption, because EPA ignored the possibility that contaminants from other wastes and wastewaters would be codisposed with the potentially exempt waste in the wastewater treatment system. In response, EPA notes that its analysis was an attempt to gauge the significance of a worst-case discharge into the treatment system to determine if any significant incremental risks would result from the practice. EPA found no such incremental risks and therefore concluded that the exemption was appropriate. In fact, EPA found that risks due to the exempted wastes would be extremely small.

The commenter expressed concern that the exemption would likely be encouraging the generation of larger quantities of hazardous wastewater treatment sludge, which would be incompatible with the waste minimization policy and objectives articulated by Congress in Section 1003 of RCRA.

In response, EPA believes that refineries have no incentive to discharge solids to wastewater treatment, because the solids would end up as F037 or other hazardous waste. As discussed above, other comments noted that the quantity of such primary sludge would be much greater than the quantity of solids initially dumped into the system.

E. Third Party Recycling of Spent Petroleum Catalysts

In the November 20, 1995 proposal, the Agency suggested that it might be appropriate to exempt these thermal petroleum catalyst recovery units from RCRA Subtitle C regulation. The Agency solicited important additional information needed to adequately assess the basis for promulgating this potential exemption (see 60 FR at 57780). This information included the extent to which petroleum catalyst recovery units are currently equipped with emission control devices, the adequacy/efficiency of existing controls, and the amounts and concentrations of emissions of HAPs regulated under section 112 of the CAA as well as under Subtitle C of RCRA. (*Id.*)

The Agency's preliminary findings in 1995, based on very limited data, indicate that these units may already be equipped with pollution controls comparable to those required under RCRA regulations for boilers and industrial furnaces (BIFs) that burn hazardous waste. However, EPA pointed out in 1995 the importance and need for additional air emissions data, in particular, information on the types and levels of HAPs being emitted from these offsite hazardous waste reclamation and regeneration units. (*Id.*)

No information on these key factors was forthcoming on these units. Only one facility submitted a copy of its state air permit. The nature of, and data associated with, this facility's state permit are much too limited to provide an adequate record for the Agency to make a determination on whether to

exempt from RCRA controls this entire class of reclamation and regeneration units. The information in the permit is manifestly insufficient for such a determination. Even if it were more complete, EPA could likely not extrapolate the information from this single facility to all thermal units with an adequate degree of confidence. For instance, the permit contains limits only on emission rates of CAA criteria air pollutants carbon monoxide (CO), sulfuric oxides (SO_X), nitrogen oxides (NO_X), particulate matter (Method 10) (PM_{10}), and volatile organic constituents (total-VOCs) on an average annual basis. Daily/hourly mass discharge rates or concentrations for these pollutants were lacking, as was any information on HAPs of concern under Section 112 of the CAA (and, because of their hazardousness, under RCRA as well), or the means by which such HAPs might be controlled. Also, this permit report lacks information on the destruction and removal efficiency (DREs) that the combustion unit can achieve for potential principal organic constituents (POCs) fed to the regeneration process (see 40 CFR 266.104(2)). Finally, the permit report lacks information on the kind of controls for metal emissions as well as the types and levels of metals being emitted.

EPA has no additional data on similar units and on the key factors to be considered in determining whether to finalize the proposed exemption. At this point, therefore, the administrative record for this rule is simply not sufficient to support a final decision one way or the other.

Given the current state of the administrative record and the other circumstances discussed above, EPA is deferring to a later day any final decision on whether or not to exempt these units from RCRA Subtitle C air emission standards. The timing of this decision depends, in large part, on the gathering and submittal of additional data on the key factors identified above, especially the types and levels of HAP emissions from these units and the adequacy of air pollution controls for these emissions.

EPA encourages owners and operators of these facilities to supplement the record with design, operation, and emissions information so that further progress toward a final determination on the potential exemption can be made. In the interim, EPA reiterates that nothing in today's rule (or indeed the proposed rule) changes the current RCRA status of facilities managing these hazardous wastes.

VI. Land Disposal Restrictions

A. Treatment Standards for Newly Identified Wastes

The land disposal prohibition statutory provisions essentially require pretreatment of hazardous wastes so that threats to human health and the environment posed by land disposal of the waste are minimized (RCRA sections 3004(g)(4) and (m)). Land disposal prohibitions for hazardous wastes are to be promulgated pursuant to a phased schedule, the determination for newly listed wastes-those listed after adoption of the 1984 amendments-to be made within six months of promulgation of the listing (RCRA section 3004(g)(4)); see generally, 55 FR 22523, June 1, 1990.) A determination to prohibit hazardous wastes from land disposal is essentially automatic, since only land disposal that satisfies the exacting statutory no-migration standard may be disposed without first satisfying the section 3004 (m) treatment standards. (*Id*). A method of land disposal may not be determined to be protective of human health and the environment until the waste has complied with 3004(m) pretreatment regulations, unless upon application of an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous (RCRA section 3004(d)). No one contends that disposal of the petroleum wastes listed in this rulemaking satisfies the no-migration standard.

EPA has traditionally developed treatment standards for prohibited hazardous wastes based upon the performance of BDAT. The Agency further refined this approach to use the same set of technology-based numerical treatment standards whenever factually justified. These are the so-called UTS set out in § 268.48, which provide numerical treatment standards for all hazardous constituents (i.e., constituents listed in Appendix VIII of Part 261).

As part of the proposed rule, EPA proposed to apply the UTS applicable to the hazardous constituents in the newly listed petroleum refining industry wastes (see 60 FR 57783, November 20, 1995). EPA further requested data to adjust the numerical treatment standards applicable to the subject wastes to be consistent with the revisions to the UTS being considered in the Agency's Phase IV Land Disposal Restrictions rulemaking (see 62 FR 16751, April 8,1997). EPA has in fact recently slightly amended the treatment standards for the hazardous constituents antimony (see 63 FR 28562, May 26, 1998) and nickel (see 63 FR 28569, May 26, 1998). EPA also has amended the treatment standard for vanadium, which is not an underlying hazardous constituent (40 CFR 268.2(i)), but is being regulated in these wastes for the reasons given below. The constituents of concern as proposed and the treatment standards as revised are being promulgated for the newly identified K169, K170, K171, and K172 wastes. In accordance with section 3004(g)(4), EPA is also prohibiting the underground injection of these wastes (unless the wastes meet the treatment standard before injection without being diluted impermissibly, or unless the wastes are injected into a no-migration unit). Since underground injection is a type of land disposal (see section 3004(k)), this action is automatic, and implements the mandatory directive to prohibit land disposal of newly listed hazardous wastes found in section 3004(g)(4).

B. Response to Comments

Additional comments, along with EPA's responses, are provided in the Response to Comments Background Documents for the proposed rule and the NODA located in the docket for this rule. Key comments are discussed below.

1. Constituents of Concern

EPA received comment asking that, if listed, the LDR constituents of concern should be limited to benzene and arsenic. The commenter determined that these are the only two compounds which have significant risk associated with their management. The commenter maintains that the inclusion of the PAH compounds and other metals is not warranted and will require additional cost to characterize the material prior to management, and that their inclusion may prevent beneficial recycling practices due to unnecessary LDR requirements on reclaimer residuals.

The Agency disagrees. EPA is required by statute to set ''...levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized'' (RCRA section 3004(m), 42 U.S.C. 6924(m)). While the commenter is correct in that for K171 and K172 only benzene and arsenic were given as the basis of listing, treatment standards were also proposed for additional metals and PAHs. PAH compounds are highly carcinogenic, even at low

concentrations, and are present at significant concentrations in some petroleum residuals at levels exceeding the treatment standards. Although these constituents were not modeled to show significant risks through the pathways considered, the presence of these carcinogens in the wastes remains a potential threat to human health and the environment when the wastes are land disposed. Certainly, there is no basis for finding that threats posed by these constituents have been minimized without treatment (see Chemical Waste Management v. EPA, 976 F.2d at 16.) The Agency also notes that treatment standards for PAHs and nickel are currently required for other similar listed petroleum wastes (F037, F038, and K048-K052) and that damage cases associated with these wastes have noted environmental effects due to both metals and PAHs (see Background Document to Support Listing of Primary Oil/Water Separation Sludges, August 20, 1990, pages 6–8). Thus, the Agency is convinced that treatment of these constituents is necessary to minimize threats posed by the wastes' land disposal, and further convinced that the treatment standards are not established below levels at which such threats are minimized. The Agency is therefore promulgating treatment standards for all the constituents that were proposed to be regulated.

2. Sulfides

The commenter recommended that if a new treatment standard for K171 and K172 is adopted, it must include a concentration level for sulfides. The commenter believes a level of 500 ppm reactive sulfide should be specified as an exit level for land disposal restrictions, because the level has been used in Agency guidance to identify wastes that exhibit a hazardous waste characteristic for reactive sulfides as per OSWER policy memorandum No. 9443.1985(04). The commenter believes that without a numerical treatment level, the regulated community may be held to a double standard of having to meet the treatment standards for both a Listed Waste and a Characteristic Waste.

EPA responds by clarifying that those K171 and K172 wastes that exhibit the hazardous waste characteristic of reactive sulfide are currently prohibited from land disposal unless first being treated to remove the characteristic by deactivation. Underlying hazardous constituents also must be treated (see existing § 268.35 (prohibition on land disposal of reactive hazardous wastes) and § 268.40 (e) (underlying hazardous constituents in reactive wastes must also be treated). Furthermore, even after the listing takes effect, listed wastes may also exhibit one or more characteristics of a hazardous waste. Listed wastes which also exhibit characteristics of a hazardous waste must comply with all applicable treatment standards for characteristic wastes (unless the treatment standard for the listed waste contains a standard for the constituent that causes the waste to exhibit a characteristic; see § 268.9(b)). Finally, treatment must reflect the ''minimize threat'' level for land disposal (3004 (d)(1) and (g)(4) (land disposal is prohibited ''unless the Administrator determines the prohibition on one or more methods of land disposal of such waste is not required in order to protect human health and the environment...''), and so may require treatment of constituents not technically hazardous constituents, but which make a waste more dangerous to land dispose (see 56 FR at 41168 (Aug. 19, 1991) and other sources there cited). Thus, although sulfides are not hazardous constituents (since they are not listed in Appendix VIII of Part 261), they nevertheless are present in these wastes at concentrations sufficient to provide harmful properties, including self-heating pyrophoric properties and potential reactivity which must be minimized for safe disposal (See 60 FR 57783–57785).

As a point of clarification, the newly listed K171 and K172 wastes, which also are reactive, would have to comply with the UTS numerical levels for the specified hazardous constituents and deactivation for reactive sulfide prior to land disposal, but would not have to demonstrate compliance with all the underlying hazardous constituents (see § 268.9 (b)). This is because the treatment standard itself already indicates what other constituents are present in these wastes requiring treatment so as to minimize threats posed by the wastes' land disposal. The Agency will continue to determine if a separate UTS number is required to access the deactivation of sulfide from reactive wastes and, if so, will propose a number in the future.

3. Underlying Hazardous Constituents

A commenter stated that EPA should not subject listed hazardous wastes to LDR regulations regarding Underlying Hazardous Constituents (UHCs). The Agency wishes to clarify that listed wastes are not subject to UHCs per se. UHCs are regulated in characteristic wastes (40 CFR 268.1). Listed wastes are regulated for the constituents which caused the waste to be listed and any other hazardous constituents specified in the specific treatment standard that are found to be present at levels where they could possibly cause harm to human health and the environment when the wastes are land disposed (see also discussion in the preceding paragraph). The basis for the distinction is that EPA has already studied the listed wastes to determine the hazardous constituents that are typically present, but is unable to do so for characteristic wastes, since, as a class, they are much more diverse. The Agency is promulgating treatment standards for each of the proposed hazardous constituents.

4. High Temperature Metals Recovery

EPA received comments suggesting the designation of High Temperature Metals Recovery (HTMR) as an exclusive method of treatment. The Agency has finalized numerical standards for the newly listed wastes. Treaters may use any method they choose to achieve those standards, so long as the treatment is not considered impermissible dilution. The Agency believes this degree of flexibility is highly desirable to provide as many treatment options as possible, so long as the treatment satisfies the standards.

In the case of the vanadium containing K171 and K172 wastes, metals recovery may be required to reduce the constituent to levels that can be subsequently treated to comply with the LDR treatment standard. Vanadium treatment is discussed more fully in the following section.

5. Vanadium

Vanadium is not an underlying hazardous constituent of hazardous wastes that requires treatment in all characteristically hazardous wastes. (see 268.48 note 5). However, vanadium in the form of ammonium vanadate or vanadium pentoxide, are underlying hazardous constituents (since they are included in Appendix VIII of Part 261). In the course of the combustion of coke residues on the spent catalysts, vanadium compounds adsorbed on the catalysts are converted to vanadium pentoxide and the wastes are typically subjected to metals recovery for the vanadium pentoxide. Because the presence of vanadium pentoxide would impart acute toxicity to the wastes and can be readily measured as the vanadium metal, the Agency proposed treatment standards for vanadium as a constituent of concern in K171 and K172 as a surrogate measure to limit the presence of vanadium pentoxide in the wastes and to insure that the toxicity of the waste was diminished prior to disposal (see also 60 FR 57784, November 20, 1995). Without reduction

of their vanadium content, the K171 and K172 wastes would contain significant levels of vanadium in the form of toxic vanadium pentoxide.

Commenters claimed that the proposed treatment standard for vanadium is not feasible and appropriate, based on EPA's testing. In response, EPA evaluated additional data from the stabilization of wastes containing vanadium at levels below which metals recovery is feasible and, based on this data, calculated a standard of 1.6 mg/L TCLP for nonwastewaters. The Agency proposed that this higher standard replace the 0.23 mg/L TCLP standard originally proposed and believes that this standard is readily achievable (see 62 FR 26047, May 12, 1997). A facility unable to comply with the treatment standard may apply for a treatability variance under 40 CFR 268.42 (assuming the waste has been treated using the properly-operated technology on whose performance the treatment standard is based and is still unable to meet the treatment standard).

One commenter claims that the Agency incorrectly assumed that spent catalysts and their residuals are physically and chemically similar to K048–K052 and K061 wastes. The commenter noted that the chemical composition of K048–K052 and K061 wastes is quite different than that of the K171 and K172 spent catalysts. The commenter identified other physical differences between spent catalysts and K048–K052 and K061 wastes, and argued such differences apparently prevent the stabilization of vanadium in spent catalysts.

The commenter is correct that the residuals are chemically and physically quite different at their respective points of generation, the principal difference is the higher concentration of vanadium in K171/K172. However, both K061 and K171/K172 contain similar constituents of concern which are largely metal oxides once K171/K172 is deactivated. Data assembled by the commenters show that K048–K052 contain 1–350 ppm vanadium and that K061 concentrations range from 0–830 ppm, while vanadium in K171 ranges from 10–3300 ppm and, in K172, vanadium ranges from 25–31000 ppm. The commenter also states that K172 has been observed as high as 150,000 ppm vanadium and notes that after deactivation to remove the D003 characteristic, the vanadium present is highly leachable. However, the commenter presents data reflecting attempts to stabilize the deactivated waste with cement and lime, rather than proceeding through the reclamation of a vanadium pentoxide product normally produced by metal reclaimers. The Agency maintains that following such reclamation, the treated waste would be very comparable to K046–K052 and K061 in vanadium content since little vanadium would remain. Data from reclaimers indicate that these processes recover over 90 percent of the vanadium present. Without such reclamation, it would be unlikely that high vanadium wastes, like K171/K172, could be stabilized to the UTS level. The level of vanadium remaining after reclamation would still require stabilization to reduce the mobility of the toxic forms of vanadium. The Agency believes the vanadium UTS level can be achieved, therefore, through proper treatment which includes a reclamation step. Data on stabilization alone for high vanadium wastes do not reflect proper and effective treatment, and the Agency therefore is not compelled to modify the level based on this data.

One commenter asserted that the treatment standard for vanadium could not be rationally based on International Mill Service (IMS) K061 data and, to the extent that the standard could be based on INMETCO's K061 waste, the standard cannot be automatically transferred to spent catalysts because the resulting standards would not be achievable. The Agency responds that the prior treatment standard for vanadium was based on data obtained from IMS's HTMR facility. As revised in the recent Phase Four LDR Rule, the vanadium standard is derived from stabilization data. The performance levels promulgated were achievable by the other facilities from whom the Agency had also collected data (see 59 FR 47980, September 19, 1994). The Agency believes that the residuals following vanadium metal recovery of the K171 and K172 wastes can achieve the treatment standards measured on the basis of vanadium and provide protection against the significant presence of acutely toxic vanadium pentoxide in the land disposed waste. The commenter provided no data demonstrating that the treatment standards could not be met when metals recovery is performed.

6. Revisions to Proposed Standards

The Agency requested data to adjust the numerical treatment standards applicable to the petroleum wastes subject of this rulemaking to be consistent with the treatment standards proposed in the Phase IV Land Disposal Restrictions (see 62 FR 26041, 26047–26048; May 12, 1997). Commenters supported the proposed revisions to the treatment standards. In each case, the proposed standards reflect the higher of the stabilization-based or HTMR-based calculations, in order to provide flexibility to use various well-performing treatment technologies which substantially reduce toxicity or mobility of hazardous constituents. The commenter believes the revised treatment standards that EPA has proposed for antimony, nickel, and vanadium are supported by the underlying data and are achievable by both major treatment technologies.

The Agency concurs with the commenters and also believes the BDAT methodology has been properly applied to the available data to calculate the revised treatment standards and that the levels are achievable by both major treatment technologies. Based on data submitted in the Phase IV rulemaking for nonwastewaters, the treatment level for antimony is finalized at 1.15 mg/L TCLP, the treatment level for nickel is finalized at 11.0 mg/L TCLP, and the treatment standard for the vanadium, which is applicable only to K061, K171, and K172 as a constituent of concern in these wastes, is finalized at 1.6 mg/L TCLP. The Agency is therefore promulgating these standards consistent with the levels finalized in the Phase Four Rulemaking. All other standards are promulgated as proposed.

C. Capacity Determination for Newly Identified Wastes

1. Introduction

This section summarizes the results of the capacity analysis for the wastes covered by today's rule. For a detailed discussion of capacity analysis-related data sources, methodology, and detailed response to comments for each group of wastes covered in this rule, see the following document: ''Background Document for Capacity Analysis for Land Disposal Restrictions: Newly Identified Petroleum Refining Process Wastes (Final Rule)'' (i.e., the Capacity Background Document).

EPA's decisions on whether to grant a national capacity variance are based on the availability of alternative treatment or recovery technologies. Consequently, the methodology focuses on deriving estimates of the quantities of waste that will require either commercial treatment or the construction of new on-site treatment or recovery as a result of the LDRs. The resulting estimates of required commercial capacity are then compared to estimates of available commercial capacity. If adequate commercial capacity exists, the waste is restricted from further land disposal before meeting the LDR treatment standards. If adequate capacity does not exist, RCRA

section 3004(h)(2) authorizes EPA to grant a national capacity variance for the waste for up to two years or until adequate alternative treatment capacity becomes available, whichever is sooner.

2. Capacity Analysis Results Summary

For this capacity analysis, EPA examined data on waste characteristics and management practices that have been gathered for the petroleum refining industry study in the 1992 RCRA Section 3007 survey. The Agency analyzed the capacity-related information from the survey responses, reviewed the public comments received in response to the proposed rule, contacted several commenters to obtain more specific information, and identified the following annualized quantities of newly identified hazardous wastes requiring commercial treatment: 4,400 tons of K169; 3,200 tons of K170; 3,400 tons of K171; and 7,400 tons of K172. The available data sources indicate that there are no quantities of K169–K172 wastewaters that will require alternative commercial treatment.

EPA is finalizing the rule to apply UTS to these wastes. The treatment standards for nonwastewaters containing organic constituents are based on combustion. The Agency determined that the available combustion capacity to treat these wastes far exceeds the waste quantities requiring alternative treatment when the listing determinations for these wastes become effective. Also, the Agency recognizes that the treatment residuals from these wastes may require additional treatment capacity (e.g., stabilization) to achieve the UTS for metal constituents. The Agency estimated that there several million MT per year of available commercial stabilization capacity. EPA also identified several metal recovery technologies that are commercially available, and some of these technologies are being used currently by the petroleum refining industry to recycle K171 and K172, although permitting and regulatory concerns expressed by some catalyst recyclers may need additional time to upgrade or expand their storage units. Since EPA is finalizing numerical standards for these wastes, all the technologies capable of achieving the final LDR treatment standards are not prohibited. Sufficient alternative treatment or recovery capacity exists to treat these wastes to meet the LDR standards. Therefore, EPA is not granting a national capacity variance under LDR for these wastes. The LDR standards for these wastes will become effective when the listings become effective.

For soil and debris contaminated with the newly listed wastes, EPA proposed to not grant a national capacity variance. EPA received no comments regarding this issue. EPA believes that the majority of contaminated soil and debris will be managed on-site and therefore would not require substantial off-site commercial treatment capacity. Therefore, EPA is not granting a national capacity variance to hazardous soil and debris contaminated with the newly listed wastes covered under this rule. Based on the questionnaire, there were no data showing the mixed radioactive wastes with the newly listed wastes. There were also no comments concerning the radioactive wastes mixed with the newly identified wastes. EPA is not granting a national capacity variance for mixed radioactive wastes or soil and debris contaminated with these mixed radioactive wastes.

EPA received comments concerning the availability of treatment and recovery capacity. One commenter requested a six-month delay in the effective date of the final rule, and two commenters requested that EPA grant a one- to two-year capacity variance to obtain permit modifications and construct any necessary plant upgrades. Commenters requested additional time to comply with various Subtitle C requirements, particularly relating to permitting and upgrading of areas used for storing K171 and K172 prior to the catalyst recycling process. Commenters requesting a two-year capacity variance for recycling facilities expressed concern about the potential economic impact on the facilities the Agency is relying on to provide the required treatment capacity. The commenters noted that, if promulgated as proposed, the Agency's listing would also mandate the application of the ''mixture'' and ''derived from'' rule for all management activities after the point of generation, placing additional regulatory burden (LDR treatment standards, upgrading of storage areas, potential Subpart CC compliance, and obtaining permits/variances) on environmentally sound management practices.

Based on the results of the Agency's capacity analysis, adequate commercially available treatment or recovery capacity does currently exist for K171 and K172 wastes. Furthermore, granting a national capacity variance only exempts the waste from treatment standards prior to land disposal during the variance period, but does not exempt the waste from other Subtitle C requirements, such as the requirement to have a permit for storage of hazardous waste for greater than 90 days (at generator's sites). EPA believes that six months is sufficient to allow facilities to determine whether their wastes are affected by this rule and identify and locate alternative treatment or recovery capacity if necessary. Therefore, LDR treatment standards will become effective when the listing determinations become effective for the wastes covered under this rule (see RCRA section 3004(h)(1)(land disposal prohibitions must take effect immediately when there is sufficient protective treatment capacity for the waste available).

VII. Compliance and Implementation

A. State Authority

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA hazardous waste program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under Sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time-frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA (including the hazardous waste listings finalized in this notice) take effect in authorized States at the same time that they take effect in non-authorized States. While States must still adopt HSWA-related provisions as State law to retain final authorization, EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so.

Authorized States are required to modify their programs only when EPA

promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). For those Federal program changes, both HSWA and non-HSWA, that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. Less stringent regulations, both HSWA and non-HSWA, do not go into effect in authorized States until those States adopt them and are authorized to implement them.

2. Effect on State Authorizations

Today's rule is promulgated pursuant in part to HSWA authority and in part pursuant to non-HSWA authority. The listing of the new K wastes is promulgated pursuant to RCRA section 3001(e)(2), a HSWA provision. Therefore, the Agency is adding this rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. The land disposal restrictions and the UTS for these wastes are promulgated pursuant to RCRA Section 3004(g) and (m), also HSWA provisions. Table 2 in 40 CFR 271.1(j) is modified to indicate that these requirements are self-implementing. States may apply for either interim or final authorization for the HSWA provisions in 40 CFR 271.1(j), as discussed below.

Until the States receive authorization for these more stringent HSWA provisions, EPA will implement them. EPA will also implement the exemptions that are directly related to the new listings, such as the headwork exemption and the catalyst support media exemption. These exemptions are relevant only when regulating the newly listed wastes.

Today's rule also includes several non-HSWA provisions that reduce the scope of the Federal program. These are the exclusions from the definition of solid waste of certain oil-bearing hazardous secondary materials from petroleum refining and certain recovered oils from associated petrochemical facilities. Although the States do not have to adopt these provisions, EPA strongly encourages them to do so, because the exclusions encourage material recovery within those industries.

Today's revision to the listing description for F037 wastes at § 261.31 neither broadens nor narrows the scope of the current program. This revision was made to ensure that residuals derived from recycling listed wastes, that are otherwise excluded under today's revised § 261.4(a)(12), would remain listed. Because today's revision to the F037 waste code only applies in situations where the exclusion at § 261.4(a)(12) applies, these provisions (the exclusion and the associated revised listing) should be adopted together, and taken together are considered to reduce the scope of the existing Federal requirements.

Today's rule also amends the existing regulations to clarify that certain spent caustic solutions used as feedstock are not solid waste. This clarifying amendment (40 CFR 261.4(a)(19)) does not change the scope of the RCRA program because it does not actually change the current definition of solid waste. States do not need further authorization to interpret their regulations in accordance with this clarification.

Lastly, regarding the non-HSWA amendments to the definition of solid waste (i.e., exclusions), a number of States qualified for final authorization prior to being required to adopt the redefinition of solid waste rulemaking of January 4, 1985 (50 FR 614). Since the January 4, 1985, rule is more stringent than the rule under which such States were authorized, such States were required to revise their programs in accordance with § 271.21. Today's changes will not preclude EPA's ability to authorize States which have subsequently adopted the January 4, 1985, rule since it would reduce the scope of the Federal requirements. However, certain aspects of the State's regulation will be broader in scope than the Federal program and therefore not part of the authorized State program. This means that while they are enforceable under State law, they are not subject to Federal regulatory enforcement.[25]

A State submitting a program modification for the portions of this rule promulgated pursuant to HSWA authority may apply to receive either interim authorization under RCRA section 3006(g) or final authorization under 3006(b), if the State requirements are, respectively, substantially equivalent or equivalent to EPA's requirements. States can only receive final authorization for program modifications implementing non-HSWA requirements. The procedures and schedule for final authorization of State program modifications are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations are currently scheduled to expire on January 1, 2003 (see 57 FR 60129, February 18, 1992).

Section 271.21(e)(2) of EPA's State authorization regulations (40 CFR part 271) requires that States with final authorization modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The deadline by which the States must modify their programs to adopt this regulation is determined by the date of promulgation of a final rule in accordance with section 271.21(e)(2). Table 1 at 40 CFR 271.1 is amended accordingly. Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in this rule. These State regulations have not been assessed against the Federal regulations being finalized to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these regulations as RCRA requirements until State program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, States with existing regulations that are more stringent than or broader in scope than current Federal regulations may continue to administer and enforce their regulations as a matter of State law. In implementing the HSWA requirements, EPA will work with the States under agreements to avoid duplication of effort.

B. Effective Date

The effective date of today's rule is February 8, 1999, except as specified in the Effective Dates section. As discussed above, since today's rule is issued pursuant to HSWA authority, EPA will regulate the management of the newly identified hazardous wastes until States are authorized to regulate these wastes. Thus, EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized States.

[25] Today's rule affects only the regulatory definition of solid waste. It does not interpret the term ''solid waste'' for purposes of the non-regulatory authorities in RCRA sections 3007, 3013, 7002, and 7003. thus, for purposes of those authorities, the Agency would have the benefit of the full jurisdictional reach of the statutory definition of solid waste. See Connecticut Coastal Fishermen's Association v. Remington Arms Co., 989 F2d 1305, 1314–15 (2d. Cir. 1993) (comparing the narrower regulatory definition of solid waste for determining the scope of Subtitle C regulation with the broader statutory definition); Comite. Pro Rescate de la Salud v. Puerto Rico Aqueduct and Sewer Authority, 888 F.2d 180, 187 (1st Cir. 1990) (noting that under RCRA EPA could implement two different definitions of solid waste: a broader definition for imminent and substantial endangerment authority and a more narrow definition for regulatory purposes).

C. Section 3010 Notification

Pursuant to RCRA section 3010, the Administrator may require all persons who handle hazardous wastes to notify EPA of their hazardous waste management activities within 90 days after the wastes are identified or listed as hazardous. This requirement may be applied even to those generators, transporters, and treatment, storage, and disposal facilities (TSDFs) that have previously notified EPA with respect to the management of other hazardous wastes. The Agency has decided to waive this notification requirement for persons who handle wastes that are covered by today's listings and have already (1) notified EPA that they manage other hazardous wastes, and (2) received an EPA identification number. The Agency has waived the notification requirement in this case because it believes that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number. However, any person who generates, transports, treats, stores, or disposes of these wastes and has not previously received an EPA identification number must obtain an identification number pursuant to 40 CFR 262.12 to generate, transport, treat, store, or dispose of these hazardous wastes by November 4, 1998.

D. Generators and Transporters

Persons that generate newly identified hazardous wastes may be required to obtain an EPA identification number if they do not already have one (as discussed in section VI.C, above). In order to be able to generate or transport these wastes after the effective date of this rule, generators of the wastes listed today will be subject to the generator requirements set forth in 40 CFR part 262. These requirements include standards for hazardous waste determination (40 CFR 262.11), compliance with the manifest (40 CFR 262.20 to 262.23), pretransport procedures (40 CFR 262.30 to 262.34), generator accumulation (40 CFR 262.34), record keeping and reporting (40 CFR 262.40 to 262.44), and import/export procedures (40 CFR 262.50 to 262.60). It should be noted that the generator accumulation provisions of 40 CFR 262.34 allow generators to accumulate hazardous wastes without obtaining interim status or a permit only in units that are container storage units or tank systems; the regulations also place a limit on the maximum amount of time that wastes can be accumulated in these units. If these wastes are managed in surface impoundments or other units that are not tank systems or containers, these units are subject to the permitting requirements of 40 CFR parts 264 and 265, and the generator is required to obtain interim status and seek a permit (or modify interim status or a permit, as appropriate). Also, persons who transport newly identified hazardous wastes will be required to obtain an EPA identification number as described above and will be subject to the transporter requirements set forth in 40 CFR part 263.

E. Facilities Subject to Permitting

1. Facilities Newly Subject to RCRA Permit Requirements

Facilities that treat, store, or dispose of wastes that are subject to RCRA regulation for the first time by this rule (that is, facilities that have not previously received a permit pursuant to section 3005 of RCRA and are not currently operating pursuant to interim status), might be eligible for interim status (see section 3005(e)(1)(A)(ii) of RCRA). In order to obtain interim status based on treatment, storage, or disposal of such newly identified wastes, eligible facilities are required to comply with 40 CFR 270.70(a) and 270.10(e) by providing notice under section 3010 and submitting a Part A permit application no later than February 8, 1999. Such facilities are subject to regulation under 40 CFR part 265 until a permit is issued.

In addition, under section 3005(e)(3) and 40 CFR 270.73(d), not later than February 8, 1999, land disposal facilities newly qualifying for interim status under section 3005(e)(1)(A)(ii) also must submit a Part B permit application and certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, interim status will terminate on that date.

2. Existing Interim Status Facilities

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of the newly identified hazardous wastes and are currently operating pursuant to interim status under section 3005(e) of RCRA, must file an amended Part A permit application with EPA no later than the effective date of today's rule, (i.e., February 8, 1999). By doing this, the facility may continue managing the newly listed wastes. If the facility fails to file an amended Part A application by that date, the facility will not receive interim status for management of the newly listed hazardous wastes and may not manage those wastes until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.10(g)).

3. Permitted Facilities

Facilities that already have RCRA permits must request permit modifications if they want to continue managing newly listed wastes (see 40 CFR 270.42(g)). This provision States that a permittee may continue managing the newly listed wastes by following certain requirements, including submitting a Class 1 permit modification request by the date on which the waste or unit becomes subject to the new regulatory requirements (i.e., the effective date of today's rule), complying with the applicable standards of 40 CFR parts 265 and 266 and submitting a Class 2 or 3 permit modification request within 180 days of the effective date.

Generally, a Class 2 modification is appropriate if the newly listed wastes will be managed in existing permitted units or in newly regulated tank or container units and will not require additional or different management practices than those authorized in the permit. A Class 2 modification requires the facility owner to provide public notice of the modification request, a 60-day public comment period, and an informal meeting between the owner and the public within the 60-day period. The Class 2 process includes a ''default provision,'' which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is permanently authorized (see 40 CFR 270.42(b)).

A Class 3 modification is generally appropriate if management of the newly listed wastes requires additional or different management practices than those authorized in the permit or if newly regulated land-based units are involved. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60-day public comment period, the Agency will grant or deny the permit modification request according to the more extensive procedures of 40 CFR part 124. There is no default provision for Class 3 modifications (see 40 CFR 270.42(c)).

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all applicable 40 CFR part 265 groundwater monitoring and financial responsibility requirements no later than February 8, 1999. If the facility fails to submit these

certifications, authority to manage the newly listed wastes under 40 CFR 270.42(g) will terminate on that date.

4. Units

Units in which newly identified hazardous wastes are generated or managed will be subject to all applicable requirements of 40 CFR part 264 for permitted facilities or 40 CFR part 265 for interim status facilities, unless the unit is excluded from such permitting by other provisions, such as the wastewater treatment tank exclusions (40 CFR 264.1(g)(6) and 265.1(c)(10)) and the product storage tank exclusion (40 CFR 261.4(c)). Examples of units to which these exclusions could never apply include landfills, LTUs, waste piles, incinerators, and any other miscellaneous units in which these wastes may be generated or managed.

5. Closure

All units in which newly identified hazardous wastes are treated, stored, or disposed after the effective date of this regulation that are not excluded from the requirements of 40 CFR parts 264 and 265 are subject to both the general closure and post-closure requirements of Subpart G of 40 CFR parts 264 and 265 and the unit-specific closure requirements set forth in the applicable unit technical standards Subpart of 40 CFR parts 264 or 265 (e.g., Subpart N for landfill units). In addition, EPA promulgated a final rule that allows, under limited circumstances, regulated landfills, surface impoundments, or LTUs to cease managing hazardous waste but to delay Subtitle C closure to allow the unit to continue to manage non-hazardous waste for a period of time prior to closure of the unit (see 54 FR 33376, August 14, 1989). Units for which closure is delayed continue to be subject to all applicable 40 CFR parts 264 and 265 requirements. Dates and procedures for submittal of necessary demonstrations, permit applications, and revised applications are detailed in 40 CFR 264.113(c) through (e) and 265.113(c) through (e).

F. Landfill Leachate

Just weeks before the date for signature of this rule, one waste management company raised to the Agency an issue not addressed in their (or any other commenters'') public comments. The issue is that the company claims to operate landfills in which some or all of the wastes being listed today have already been disposed. These landfills generate substantial volumes of leachate, which is collected and managed—mostly by shipment via truck for treatment at Publicly Owned Treatment Works (POTWs). On the date the listings take effect, the wastes become hazardous, and a consequence is that this leachate would likewise be a hazardous waste by virtue of the derived-from rule. See generally 53 FR at 31147 (August 17, 1988); see also Chemical Waste Management v. EPA, 869 F. 2d 1526, 1536–37 (D.C. Cir. 1989) (sustaining this interpretation). Although the landfills in which the wastes have been previously disposed do not thereby become subject to Subtitle C regulation, id., leachate which is collected and actively managed would be regulated under Subtitle C. Id.

EPA's Office of Water recently proposed national effluent limitations guidelines and pretreatment standards for wastewater discharges (e.g., leachate) from certain types of landfills. 63 FR 6426 (February 6, 1998). In support of this proposal, EPA conducted a study of the volume and chemical composition of wastewaters generated by both Subtitle C and Subtitle D landfills. EPA did not propose pretreatment standards for Subtitle D landfill wastewaters sent to POTWs because the Agency's information indicated that such standards were not required due to several factors, including (1) raw leachate data was below published biological inhibition levels, and (2) lack of pass-through of toxics (including lack of showing of adverse impact on POTW sludge quality). 63 FR at 6444. EPA initially found, among other things, that ''the majority of pollutants typically found in raw [non-hazardous landfill] leachate were at levels comparable to wastewater typically found at the headworks of a POTW.'' Id.

Leachate from non-hazardous waste landfills that have historically managed the newly-listed wastes would be leachate from a Subtitle D facility, and so could ultimately be determined not to require pretreatment under this pending proposal. However, if Subtitle C regulation were to apply to leachate generated from such landfills, leachate now trucked to POTWs would, as a practical matter, no longer be managed by POTWs, since POTWs would not wish to become RCRA Subtitle C facilities. Given the pending proposal that directly addresses the treatment of landfill leachate under the Clean Water Act, EPA believes it worthwhile to study whether RCRA regulation of such leachates may be duplicative within the meaning of RCRA section 1006(b)(1) (which requires EPA to integrate regulations under RCRA with other statutes implemented by EPA in a manner that avoids duplication to the maximum extent possible, consistent with the goals and policies of RCRA and the other statutes).

Since this leachate issue was not brought to the Agency's attention in a timely manner, EPA is taking no action on this issue in this rulemaking. The final rule thus simply finalizes four of the proposed listings (K169, K170, K171, and K172), therefore the possibility exists that some leachate may be classified by one or more of these waste codes (after the effective date of today's rule) for the reasons outlined above. However, the Agency is seeking public comment on the issue by means of a Notice of Data Availability (NODA), published elsewhere in today's **Federal Register**. EPA plans to take some type of action addressing this issue, after considering any public comments to this projected NODA, before today's listings take effect. One of the options the Agency might consider (after consideration of comments and information in response to the NODA) would be temporarily deferring the application of the listings to the leachate.

VIII. CERCLA Designation and Reportable Quantities

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as any solid waste that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) and that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in §§ 261.21 through 261.24), are hazardous substances under CERCLA, as amended (see CERCLA section 101(14)(C)). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). If a hazardous substance is released in an amount that equals or exceeds its RQ, the release must be reported immediately to the National Response Center (NRC) pursuant to CERCLA section 103.

A. Reporting Requirements

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that is equal to or exceeds its RQ must immediately notify the NRC as soon as that person has knowledge of the release. The toll-free telephone number of the NRC is 1–800–424–8802; in the Washington, DC, metropolitan area, the number is (202) 267–2675. In addition to this reporting requirement under CERCLA, section 304 of EPCRA requires owners or operators of certain facilities to report releases of extremely hazardous substances and CERCLA hazardous substances to State

and local authorities. EPCRA section 304 notification must be given immediately after the release of an RQ or more to the community emergency coordinator of the local emergency planning committee for any area likely to be affected by the release and to the State emergency response commission of any State likely to be affected by the release.

Under section 102(b) of CERCLA, all hazardous substances (as defined by CERCLA section 101(14)) have a statutory RQ of one pound, unless and until the RQ is adjusted by regulation. In today's final rule, EPA is adding waste streams K169, K170, K171, and K172 to the CERCLA list of hazardous substances and adjusting the one-pound statutory RQs for these wastes.

B. Standard and Alternative RQ Adjustment Methodology

EPA's methodology for adjusting the RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. The intrinsic properties examined-called ''primary criteria''-are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity.

Generally, for each intrinsic property, EPA ranks the hazardous substance on a five-tier scale, associating a specific range of values on each scale with an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. Based on the various primary criteria, the hazardous substance may receive several tentative RQ values. The lowest of the tentative RQs becomes the ''primary criteria RQ'' for that substance.

After the primary criteria RQ is assigned, the substance is evaluated further for its susceptibility to certain degradative processes, which are used as secondary RQ adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its primary criteria RQ is generally raised one level. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance.

The standard methodology used to adjust the RQs for RCRA hazardous waste streams differs from the methodology applied to individual hazardous substances. The procedure for assigning RQs to RCRA waste streams is based on an analysis of the hazardous constituents of the waste streams. The constituents of each RCRA hazardous waste stream are identified in 40 CFR part 261, Appendix VII. EPA determines an RQ for each constituent within the waste stream and establishes the lowest RQ value of these constituents as the adjusted RQ for the waste stream. In a November 20, 1995, proposed rule (60 FR 57747), EPA proposed one-pound RQs for waste streams K169, K170, K171, and K172 based on this standard methodology.

In the same rule, however, the Agency also proposed an alternative method for adjusting the RQs of these four petroleum refining wastes. The proposed alternative method involved developing ''concentration-weighted'' RQs for the four wastes. Using this alternative method, EPA first determined the maximum observed concentrations of each hazardous constituent in the wastes. EPA then used these concentrations to calculate the amount of each petroleum refining waste necessary to contain the RQ of each constituent of concern.

Based on these calculated amounts, EPA assigned a ''concentration-weighted'' RQ value of 1, 10, 100, 1,000, or 5,000 pounds to each waste stream constituent. If the calculated amount for a particular constituent was greater than the maximum RQ level of 5,000 pounds, the ''concentration-weighted'' constituent RQ would be 5,000 pounds. If the calculated amount fell between two RQ levels, then the ''concentration-weighted'' constituent RQ would be the lower of the two levels. Finally, under this alternative method, the lowest of the concentration-weighted constituent RQs would become the RQ for the waste stream.

C. Basis for RQ Adjustments in Final Rule

In today's final rule, EPA has decided to use the standard RQ adjustment methodology to assign RQs to petroleum refining wastes K169, K170, K171, and K172. The Agency believes that introduction of a second methodology (i.e., the alternative method described above), in addition to the standard method already in use, may be difficult to implement and may unnecessarily confuse the public and the regulated community.

EPA considered three specific implications of adopting the alternative RQ adjustment methodology in making its determination to retain the standard method. First, promulgation of RQs based on the alternative methodology for the four petroleum refining wastes would have introduced a potentially confusing situation in which RQs for currently listed hazardous waste streams would be based on two different methodologies. Second, since EPA's initial RQ adjustment rulemakings were first published in 1983, EPA has consistently applied the standard methodology to adjust the RQs for all previously listed RCRA wastestream. Members of the public and the regulated community understand and are complying with this methodology and related reporting requirements. Third, the reduced reporting burden expected from the application of the alternative method (i.e., reporting based on constituent concentrations) to the four petroleum refining wastes can be achieved by applying the mixture rule (as described in Section VIII.D, ''Responses to Comments,'' of this preamble), without creating a second, different RQ adjustment methodology.

Based on these considerations, the Agency has decided to use the standard methodology, rather than the alternative method, to adjust the RQs for the petroleum refining wastes in today's final rule. Using the standard method, EPA today is assigning one-pound adjusted RQs (as proposed) for waste streams K170, K171, and K172 based on the constituent(s) within each of these newly listed waste streams with the lowest RQ. The Agency, however, is modifying its interpretation of the mixture rule (as described in detail in Section VIII.D below) to allow facilities to use the maximum observed concentrations of the constituents within the petroleum refining wastes in determining when to report releases of these wastes.

In addition, EPA mentioned in the preamble to the November 20, 1995, proposed rule that the Agency was considering listing waste stream K169 (crude oil storage tank sediment). Subsequent to the proposal, EPA has decided to list K169 as a RCRA hazardous waste and a CERCLA hazardous substance, and to adjust its RQ.

In the November 20, 1995 rule, EPA was considering a one-pound RQ for K169 based on the one-pound RQs of three substances (benzo(a)pyrene, dibenzo(a,h)anthracene, and benzo(b)fluoranthene) originally identified by the Agency as constituents of this waste stream. After further evaluation of the constituent data, however, the Agency has decided in today's final rule to identify only one hazardous constituent (i.e., benzene) for waste stream K169 in Appendix VII to

40 CFR part 261 (see Section V.B.2 for a discussion of the basis for listing K169). Thus, using the standard RQ adjustment method, EPA is promulgating a 10-pound RQ for K169 in today's final rule based on the 10-pound RQ of the waste's single hazardous constituent, benzene.

D. Response to Comments

As noted above, the Agency has decided to use the standard methodology to adjust the RQs for K169, K170, K171, and K172. The commenters on the proposed rule, however, favored the alternative RQ adjustment methodology. These commenters suggested that reporting should be based on actual concentration levels observed in each of the petroleum refining wastes and that these levels are more likely to warrant notification of government authorities.

In addition, one of the commenters asked EPA to clarify that a waste generator could retain the option of applying the mixture rule to releases of these petroleum refining wastes. Specifically, this would allow the generator to report at a higher level if the generator knew that the concentrations of the constituents in the waste were lower than the maximum observed concentrations identified by EPA.

EPA acknowledges the commenters' support for less burdensome reporting requirements and agrees with the commenters' assertion that reporting for the four petroleum refining wastes should be based on actual concentration levels observed in each of these wastes. The Agency, however, believes that reductions in the reporting burden for these four wastes can be achieved through the use of the mixture rule, without creating a second, distinct RQ adjustment methodology. In response to the commenters' concerns, the Agency is modifying its interpretation of the mixture rule, as described below, to allow facilities to use the maximum observed concentrations of the constituents within K169, K170, K171, and K172 in determining when to report releases of these wastes.

For K169, K170, K171, and K172, where the person in charge does not know the actual concentrations of the hazardous constituents, that person will have the option of reporting on the basis of the maximum observed concentrations that have been identified by EPA (see Table VIII–1 below). The change in EPA's interpretation of the mixture rule that will allow use of these maximum concentrations is codified in 40 CFR 302.6(b)(1) as a new subparagraph (iii) in today's rule. Thus, although the person in charge lacks actual knowledge of constituent concentrations, constructive knowledge of the EPA-identified maximum concentrations is assumed. This assumption is reasonable and conservative because the sampling data presented in the Technical Listing Document accurately identify the maximum observed concentrations of the hazardous constituents in each of the petroleum refining wastes. Table VIII–1 below identifies the hazardous constituents for waste streams K169, K170, K171, and K172, their maximum observed concentrations in ppm, their constituents' RQs as listed in Table 302.4 of 40 CFR part 302, and the number of pounds of the waste needed to contain an RQ of each constituent.

TABLE VIII–1.—POUNDS REQUIRED TO CONTAIN RQ FOR EACH CONSTITUENT

Waste	Constituent	Max ppm	RQ (lb)	Pounds required to contain RQ
K169	Benzene	220	10	45,455
K170	Benzene	1.2	10	8,333,333
	Benzo (a) pyrene	230	1	4,348
	Dibenz (a,h)anthracene	49	1	20,408
	Benzo (a)anthracene	390	10	25,641
	Benzo fluoranthene	110	1	9,090
	Benzo (k) fluoranthene	110	5000	45,454,545
	3-Methylcholanthrene	27	10	370,370
	7,12-Dimethylbenz (a) anthracene	1,200	1	833
K171	Benzene	500	10	20,000
	Arsenic	1,600	1	625
K172	Benzene	100	10	100,000
	Arsenic	730	1	1,370

For example, if waste stream K171 is released from a facility and the person in charge does not know the actual concentrations of the benzene and arsenic constituents, the person may assume that the concentrations of benzene and arsenic are 500 and 1,600 ppm. respectively. Thus, applying the mixture rule, 625 pounds of the K171 waste would need to be released (assuming the maximum concentrations indicated in the table) to reach the RQ for arsenic in this waste.

Where the person in charge knows the concentration levels of all the hazardous constituents in a particular petroleum refining waste, the traditional mixture rule can be applied. Under this scenario, reporting would be required only when an RQ or more of any hazardous constituent is released. As applied to the petroleum refining wastes in this rule, EPA's overall reporting approach reduces the burden of notification requirements for the regulated community and adequately protects public health and welfare and the environment. In addition, EPA believes that the approach described above is consistent with the view expressed by the commenters that reporting for the four wastes should be based on actual concentration levels.

In the proposed rule preamble, EPA identified ''self-heating solids'' as a hazardous constituent of waste streams K171 and K172. Two of the commenters disagreed with the Agency's use of this term and indicated that most K171 and K172 wastes do not demonstrate the RCRA characteristic of ignitability. According to these commenters, the few wastes that do exhibit this characteristic will already be subject to the 100-pound RQ that applies to ignitable characteristic wastes. Finally, the commenters stated that EPA's use of the term ''self-heating solid'' as a constituent of K171 and K172 wastes would unfairly lower the RQ for those wastes that do not possess the RCRA characteristic of ignitability. EPA agrees with the commenters and has removed the term ''self-heating solids'' from the

list of constituents of K171 and K172 in Table VIII–1 of today's final rule.

IX. Executive Order 12866

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to 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 affects 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 interferes 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

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because of policy issues arising out of legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

X. Economic Analysis

Summary

This section of the preamble develops the costs and the industry economic impact for the petroleum refining waste listings including land disposal restriction (LDR) impacts. Based on this economic analysis, the Agency estimates that the listing of the four refinery wastes discussed above, including LDR impacts, the oil-bearing hazardous secondary material exclusion (oil-bearing exclusion) and the wastewaters from the headworks exemptions for crude oil storage tank sediment (K169) and CSO sediment (K170), will result in nationwide annualized compliance costs between $20 and $40 million, with an expected value of about $30 million ($1997)[26] (see Table X–2 below). Although Table X–2 shows a range from approximately $12 million to $60 million (columns 5 and 6), the likely range will be narrower due to the available refinery choices and expected waste volumes. The wide variance is nonetheless due to a high degree of uncertainty in costing and, particularly, in volumes to be processed.

Of special note is the relationship of previously listed petroleum refinery wastes to this rulemaking. The ability to recycle wastes through coker processing, as described herein, will enable refineries to process previously listed wastes in a like manner. These wastes include FO37, FO38, KO48, KO49 and KO51. A conservative estimate of the volume of these wastes that may be processed, yielding oil that may be converted to product, results in feedstock having a value of some $14 million to $28 million ($1997); see background document entitled ''Other Benefits From Recovery of Oil in Coker Processing Units'', dated August 24, 1995. Clearly, the impact of this ''other'' benefit as a potential offset to the costs of the rule described herein can be substantial. If the volumes available from previously listed wastes are higher than estimated, the value of oil generated may substantially offset the costs of this rulemaking. It is important to note that EPA has insufficient data to judge the extent to which the industry may already be generating this added feedstock.

Industry pricing and operating impacts, developed using partial equilibrium analysis, are expected to be minimal. This is due both to the size of the industry and the latitude afforded industry in this rulemaking. The full economic analysis is available in the regulatory docket titled ''Background Documents for the Cost and Economic Impact Analysis of Listing Four Petroleum Wastes as Hazardous Under RCRA Subtitle C,'' January 10, 1998.

In the cited background document, supplemental cost impact analyses accounting for the cost savings of the oil-bearing exclusion and the headworks exemption are included, as well as impacts resulting from the new Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) and the potential for unfunded mandates. Finally, as noted above, cost savings from the recovery of oil in coker processing units are evaluated for five previously listed petroleum refining industry wastes but , also as noted, are not included as offsets to the costs estimated for this rulemaking.

A. Compliance Costs for Listings Including LDR Impacts and the Exclusion for Oil-Bearing Hazardous Secondary Materials

This Section describes (1) the universe of petroleum refineries and volumes of petroleum refining wastes in the four waste groups listed, including LDR impacts, (2) an overview of the industry impact methodology, later described in detail, and detail of the methodology for determining incremental compliance cost, (3) the potential remedial action costs, and (4) a summary of incremental compliance cost results.

1. Universe of Petroleum Refineries and Waste Volumes

In order to estimate costs, it was first necessary to estimate total annual generation of petroleum refining wastes. The domestic petroleum refining industry affected by this ruling is composed of 162 refineries owned/operated by 80 companies. The quantity of waste at the point of generation (i.e., entering the waste management system) could range from 91,600 to 177,900 metric tons per year, with an expected value of approximately 134,800 metric tons per year.[27]

2. Methodology for Estimating Industry Economic Impact and Incremental Compliance Cost

Industry Impact, Overview

Partial equilibrium analysis, as was noted, was used to evaluate possible changes in market demand, estimate the post-control shift in market supply, predict the change in market equilibrium (price and quantity), and estimate plant closures. Petroleum refineries produce several hundred products. The economic impact analysis evaluates the impact of the listings based on ten petroleum products (i.e., ethane/ethylene, butane/butylene, normal butane/butylene, isobutane/isobutylene, finished motor gasoline, jet fuel, distillate and residual fuel oil, asphalt, and petroleum coke), which represented 91 percent of domestically refined petroleum products in 1992. Because compliance costs for the hazardous waste listings cannot be allocated to any specific products, output in the partial equilibrium model is defined as a composite, bundled product equal to the sum of price

[26] The range of cost estimates is explained in Document 5 of the ''Background Documents for the Cost and Economic Impact Analysis of Listing Four Petroleum Refining Wastes as Hazardous Under RCRA Subtitle C,'' January 10, 1998.

[27] Waste quantity estimates for the point of generation and final management are presented in Table 3.3 of Document 1 of the ''Background Documents for the Cost and Economic Impact Analysis of Listing Four Petroleum Refining Wastes as Hazardous Under RCRA Subtitle C,'' January 10, 1998.

multiplied by the weighted production volumes of all ten products.

Due to the wide range of potential costs, as shown in the table at the end of this section, a bounding analysis was conducted to evaluate the maximum potential industry economic impact of this listing determination. Highest cost options bounded the industry economic impact analysis. The upper bound LDR Scenario assumes a pretreatment management method of solidification prior to Subtitle C landfill for metal-based wastes, combustion in a Subtitle C incinerator/BIF for organic-based wastes, and a listing exemption granted for organic-based wastes that are recycled to a coker. The lower bound LDR Scenario uses the same assumptions except on-site incineration costs are assumed for those refineries generating sufficient quantities to warrant construction of an incinerator. EPA's judgement that industry impact is minimal is based on upper-bound costs to the industry.

Incremental Compliance Cost

EPA's approach to the compliance cost analysis for this rule was to compare the cost of current management practices, as reported in the RCRA section 3007 Questionnaire of petroleum refineries, with the projected cost of management to comply with the RCRA Subtitle C hazardous waste program. This difference in cost, when annualized [28], represents the incremental annual compliance cost attributable to the rule.

Three scenarios are evaluated in this Cost and Economic Impact Analysis. The first scenario, Listing Scenario, assesses the costs incurred by the petroleum refining industry to comply with Subtitle C regulation excluding LDR regulations. The Listing Scenario assumes an end disposal management of Subtitle C landfilling or continued combustion of wastes, where indicated as the baseline management practice, in a Subtitle C incinerator/BIF.

The second scenario, LDR Scenario, expands on the Listing Scenario by adding in cost impacts attributable to LDR regulations. Two options are assessed for the LDR Scenario. In Option 1, the upper-bound estimate, oil-based crude oil storage tank sediment (K169) and CSO sediment (K170) are combusted in off-site Subtitle C incinerators and spent hydrotreating and hydrorefining catalysts (K171, K172, respectively) are combusted in off-site incinerators followed by vitrification and Subtitle C landfill of the ash. In Option 2, the lower-bound estimate, oil-based crude oil storage tank sediment (K169) and CSO sediment (K170) are assumed to be managed in on-site Subtitle C incinerators for those refineries generating sufficient quantities and currently in the RCRA permitting program (thereby avoiding potential corrective action costs). Spent hydrotreating and hydrorefining catalysts (K171, K172) are assumed to be regenerated/reclaimed in RCRA-exempt off-site metal recovery units.[29] Compliance with LDR requirements is presumed to be mandatory.

The third scenario, Oil-Bearing Exclusion Scenario, modifies the Listing and LDR Scenarios by assuming the refinery will process crude oil storage tank sediment (K169) and CSO sediment (K170) in coking units where it is more cost-effective than Subtitle C management. Two options are assessed for the Oil-Bearing Exclusion Scenario. In Option 1, the upper-bound estimate, crude oil storage tank sediment (K169) and CSO sediment (K170) are processed in on-site and intracompany (i.e., ''same company'') coking units when it is more economical than management in off-site Subtitle C incinerators. In Option 2, the lower-bound estimate, crude oil storage tank sediment (K169) and CSO sediment (K170) are processed in intercompany (i.e., ''not same company'') coking units when it is technically feasible and/or more economical than management in off-site incinerators. ''Not same company'' costs are lower because more companies will avail themselves of this option if permitted to do so. Spent hydrotreating and hydrorefining catalysts (K171, K172, respectively) are combusted in off-site incinerators followed by vitrification and Subtitle C landfill of the ash.[30]

Baseline or Current Management Scenario

Relying on 3007 Questionnaire responses and engineering site visits, EPA was able to determine the current (i.e., 1992) management practices for the handling and disposal of petroleum refining wastes. Current management practices varied among facilities and waste streams, and included such practices as on-/off-site Subtitle C/D landfill, off-site Subtitle C incinerator/BIF, on-site surface impoundment, recycling, recovery, regeneration, and reclamation. These ''current'' management practices at each facility represent the baseline scenario of the analysis.

As part of the 3007 Questionnaire, EPA asked each facility to identify current costs for the management of petroleum refining wastes. For this analysis, EPA relied on and has not changed the industry's own waste-specific estimates concerning the cost of current management. Industry average unit costs were developed for each baseline management practice from the 3007 Questionnaire data. EPA estimated costs for baseline management practices when limited or no cost data were provided in the 3007 Questionnaire. These calculated industry average and estimated unit costs were used when a facility did not provide its own unit cost estimates. EPA realizes that future events such as waste minimization efforts or increased demand for refinery products may change waste generation volumes and, thus, future waste management costs.[31] It is important to note that EPA also estimated missing quantities to associate costs with these quantities.

Post-Regulatory Management Scenarios

In predicting how industry would comply with the listing of petroleum refinery wastes as RCRA hazardous wastes, EPA developed the three post-regulatory management scenarios, previously noted, that represent reasonable management reactions on the part of industry. Details of the compliance assumptions are presented by baseline management practice in Table X–1. EPA developed these post-regulatory management categories based on knowledge of current waste management and the physical and chemical properties of the wastes. These scenarios are further described as follows:

The ''Listing'' Scenario assumes an end disposal management method of Subtitle C landfill or continued combustion of wastes, where indicated as the baseline management practice, in a Subtitle C incinerator/BIF. The use of the word ''Listing'' is intended to emphasize that this scenario embodies only Subtitle C costs.

The LDR Scenario presents two options. In the first option, the metal-based spent catalyst wastes are combusted in a Subtitle C incineration followed by vitrification, and Subtitle C landfill of the ash and the oil-based sediment wastes are combusted in off-

[28] Costs are discounted at a rate of 7 percent over a 20-year period.

[29] These cost estimates are presented in Document 1 of the ''Background Documents for the Cost and Economic Impact Analysis of Listing Four Petroleum Refining Wastes as Hazardous Under RCRA Subtitle C,'' January 10, 1998.

[30] These cost estimates are presented in Document 5 of the ''Background Documents for the Cost and Economic Impact Analysis of Listing Four Petroleum Refining Wastes as Hazardous Under RCRA Subtitle C,'' January 10, 1998.

[31] Baseline unit cost estimates are presented in Tables 3.8 and 3.10 of Document 1 in the ''Background Documents for the Cost and Economic Impact Analysis of Listing Four Petroleum Refining Wastes as Hazardous Under RCRA Subtitle C,'' January 10, 1998.

site Subtitle C incinerator/BIF units. This option reflects the highest cost situation of all those examined. Other technologies may be applicable (e.g., solvent extraction instead of incineration or solidification instead of vitrification for metal-based wastes) to meet LDR standards, but these are lower cost options and will not provide an upper-bound to the cost and economic analysis. In the second option, the spent hydrotreating and hydrorefining catalysts (K171, K172, respectively) are reclaimed/recovered to take advantage of the recycling exemption under RCRA Subtitle C regulation. However, recordkeeping, storage, and transportation activities are regulated under RCRA Subtitle C, while no LDR treatment costs are included. The oil-based wastes are combusted in either an on- or off-site Subtitle C incinerator/BIF depending on the economic feasibility of constructing on-site incinerator units. If a facility does not currently have a RCRA Part B permit, EPA assumed the facility would choose not to construct an on-site incinerator in order to avoid incurring potential costs under the RCRA corrective action program.

The Oil-Bearing Exclusion Scenario also presents two options. Because of the uncertainty regarding plant-specific coker capacity availability, access limitations, cost limitations, feedstock quality limitations, and State regulatory restrictions, the two options given in Table X–2 were evaluated to bound the possible results of the LDR scenarios with an oil-bearing exclusion. Refiners will seek new cost optimization solutions since coking is now economical when compared to Subtitle C management instead of Subtitle D management. The first cost option considers that, when economical, facilities will transport crude oil storage tank sediment (K169) and CSO sediment (K170) to the nearest refinery within the same company (i.e., intracompany) that currently operates a coker. As a lower-bound cost option, it is assumed that technology allowing insertion of de-oiled crude oil storage tank sediment (K169) and CSO sediment (K170) into coker feedstocks will be developed and intercompany transfers will occur, without the transferring company paying the receiving company for the right to avoid Subtitle C costs. However, it is not likely that there will be no market pricing given potential profits (compared to Subtitle C management costs) and potential benefits received by both the generator and recycler; thus the lower bound.

Incremental compliance costs are determined for each management and transportation practice by subtracting the baseline management cost from the compliance management cost. For example, the incremental unit compliance cost for wastes currently managed in off-site municipal Subtitle D landfills that now will be managed in Subtitle C landfills is $202/MT ($260/MT—$58/MT). This incremental unit cost is then multiplied by the quantity of waste generated by the facility to estimate the total incremental compliance cost.[32] Note that from Table X–2 it is possible to select various mixes of compliance options. For this rulemaking, EPA believes that the 2 right hand columns bound the compliance costs. However, Option 1 (LDR Scenario) was used in developing the worst case industry impact analysis.

TABLE X–1.—BASELINE VS. COMPLIANCE PRACTICES

Baseline management practice	Wastes managed	Compliance assumptions
Storage Methods:		
Tank	K169—crude oil storage tank sediment K170—CSO sediment K171—spent hydrotreating catalyst K172—spent hydroreffining catalyst.	Upgrade to Subtitle C accumulation tank system.a
Container (e.g., drum)	K169, K170, K171, and K172	Upgrade to Subtitle C accumulation container storage area.[(a)]
Pile	K169, K170, and K172	Construct new Subtitle C accumulation tank storage system.[(b)]
Roll-on/Roll-off Bin	K169, K170, K171, and K172	Upgrade to Subtitle C accumulation container storage area.[(a)]
Other	K169, K170, K171, and K172	Assume most common storage type reported by the industry for that waste type.
Treatment methods:		
On-site Industrial Furnace	K170	In compliance. Add RCRA Part 264 and 270 administrative costs to permit unit.
Other On-site Thermal Treatment.	K169	On-site industrial furnace.
Off-site Incineration	K169 and K171	In compliance. Construct a new on-site Subtitle C incinerator if more economical than off-site management.
Washing with Distillate	K169 and K170	Upgrade to Subtitle C accumulation tank system. [(a)]
Washing with Water	K169	Upgrade to Subtitle C accumulation tank system.[(a)]
Other Cleaning/Extraction	K171 and K172	Upgrade to Subtitle C accumulation tank system.[(a)]
Sludge Thickening	K169 and K170	Upgrade to Subtitle C accumulation tank system.[(a)]
Sludge De-watering	K169 and K170	Upgrade to Subtitle C accumulation tank system.[(a)]
Settling	K169 and K170	Upgrade to Subtitle C accumulation tank system.[(a)]
Filtration	K169 and K170	Upgrade to Subtitle C accumulation tank system.[(a)]
Pressure Filtration/Centrifuging	K169 and K170	Upgrade to Subtitle C accumulation tank system for existing units.[(a)] Construct a new on-site Subtitle C pressure filtration/centrifuge unit for a waste minimization opportunity for oily sludges.[(b)]
Chemical Emulsion Break	K169	Upgrade to Subtitle C accumulation tank system.[(a)]
Thermal Emulsion Break	K169 and K170	Upgrade to Subtitle C accumulation tank system.[(a)]
Other Phase Separation	K169, K171, and K172	Upgrade to Subtitle C accumulation tank system.[(a)]

[32] Compliance unit cost estimates are presented in Table 3.9 and 3.10 of Document 1 in the ''Background Documents for the Cost and Economic Impact Analysis of Listing Four Petroleum Refining Wastes as Hazardous Under RCRA Subtitle C,'' January 10, 1998.

TABLE X–1.—BASELINE VS. COMPLIANCE PRACTICES—Continued

Baseline management practice	Wastes managed	Compliance assumptions
On-site Land treatment	K169, K170, and K171	*Listing Scenario:* Abandon on-site land treatment unit and dispose waste in off-site Subtitle C landfill. *LDR Scenario:* K169/K170—On-/Off-site incineration; K171—Option 1: Off-site incineration and ash vitrification; Option 2: Transfer precious or non-precious metal catalysts for reclamation or regeneration.
Off-site Land treatment	K169 and K170	*Listing Scenario:* Off-site Subtitle C landfill. *LDR Scenario:* On-/Off-site incineration.
Discharge to On-site WWT Facility.	K169 and K170	In compliance due to the headwaters exemption for wastewaters discharged to NPDES or POTW.
Drying on a Pad	K169 and K170	Construct new Subtitle C accumulation tank system. [b]
On-site Oxidation of Pyrophoric Material.	K171 and K172	Upgrade to Subtitle C accumulation tank system. [a]
On-site Stabilization	K169, K170, K171, and K172	Upgrade to Subtitle C accumulation tank system. [a]
Off-site Stabilization	K171	*Listing Scenario:* In compliance. *LDR Scenario:* Ash vitrification following off-site incineration.
Other Treatment	K169	Upgrade to Subtitle C accumulation tank system. [a]
Transfer Methods:		
Transfer of Precious or Non-precious Metal Catalysts for Reclamation/Regeneration.	K171 and K172	Reclamation/regeneration facility will increase Subtitle C storage capacity and upgrade to Subtitle C transportation and management.
Transfer to Non-Petroleum Refinery for Direct Use as a Fuel or to Make a Fuel.	K169 and K170	Off-site Subtitle C BIF.
Transfer for Use as an Ingredient in Products that are Placed on the Land.	K169	Off-site Subtitle C BIF.
Transfer to Other Off-site Entity.	K169 and K171	Assume most common reported transfer method reported by industry for each waste type.
Disposal methods:		
NPDES	K169	In compliance.
Off-site Municipal Subtitle D Landfill.	K169, K170, and K171	*Listing Scenario:* Off-site Subtitle C landfill. *LDR Scenario:* On-/Off-site incineration.
Off-site Industrial Subtitle D Landfill.	K169, K170, K171, and K172	*Listing Scenario:* Off-site Subtitle C Landfill. *LDR Scenario:* On-/Off-site incineration.
Off-site Subtitle C Landfill	K169, K170, K171, and K172	*Listing Scenario:* In compliance. *LDR Scenario:* K169/K170—On-/Off-site incineration; K171/K172—Option 1: Off-site incineration followed by ash vitrification; Option 2: Transfer precious or nonprecious metal catalysts for reclamation or regeneration.
On-site Subtitle D Landfill	K170, K171, and K172	*Listing Scenario:* Off-site Subtitle C landfill. *LDR Scenario:* K170—On-/Off-site incineration; K171/K172—Option 1: Off-site incineration followed by ash vitrification; Option 2: Transfer precious or nonprecious metal catalysts for reclamation or regeneration.
On-site Subtitle C Landfill	K169, K171, and K172	*Listing Scenario:* In compliance. *LDR Scenario:* K169—On-/Off-site incineration; K171/K172—Option 1: Off-site incineration followed by ash vitrification; Option 2: Transfer precious or nonprecious metal catalysts for reclamation or regeneration.
On-site Surface Impoundment	K169	Dredge impoundment sludge and dispose in off-site Subtitle D Landfill prior to final listing and then recommission impoundment for non-hazardous waste use; Upgrade existing on-site filtration system to a Subtitle C accumulation system for sludge management.[a] *Listing Scenario:* Off-site Subtitle C landfill. *LDR Scenario:* On-/Off-site incineration.

[a] Management costs (i.e., operation and maintenance costs) for baseline and compliance are the same for this management method. Secondary containment is included where appropriate.

[b] Management costs (i.e., O&M costs) for baseline and compliance are the same for this management method. Secondary containment is included where appropriate. The compliance cost will involve closure of the drying pad and construction of a drying tank system with secondary containment.

3. Potential Remedial Action Costs Within the Refining Industry

In addition to the refinery waste management costs themselves, the petroleum refining hazardous waste listing could affect the management of soils, leachates, groundwater, and remedial materials. The Agency's ''contained in'' policy defines certain remediation wastes ''containing'' a listed hazardous waste as a RCRA hazardous waste (see Chemical Waste Management v. EPA, 869 F.2d 1526, D.C.C, 1989). Industry sites where newly identified hazardous wastes have been managed prior to the effective date of the new listings may still have contaminant concentrations which exceed ''contained in'' levels. Any firm actively managing such material could become a generator of RCRA hazardous

waste. Releases from all solid waste management units at these TSDFs, including those that in the future would be found to contain a waste meeting the petroleum listing descriptions, are covered by facility-wide corrective action under 40 CFR 264.101. Associated costs, e.g., RCRA Facility Assessment, were addressed in the draft proposed corrective action rule.

4. Summary of Compliance Cost Results

Table X–2 presents a summary of estimated incremental annualized compliance costs for each waste due to (1) listing, (2) listing including potential LDR pre-treatment regulations, and (3) listing including LDR impacts and oil-bearing exclusion cost benefits.

Under the oil-bearing exclusion scenarios, the expected value represents recycling of 65 percent of the oil-based crude oil storage tank sediment (K169) and CSO sediment (K170) in either on-site coking units or intracompany transfers when it is economically feasible, off-site incineration of the remaining 35 percent of the oil-based crude oil storage tank sediment (K169) and CSO sediment (K170) quantity, and off-site incineration and vitrification of the spent hydrotreating and hydrorefining catalysts. It is estimated that 65 percent of the oil-based crude oil storage tank sediment (K169) and CSO sediment (K170) quantity is recycled into coking units.

All of the above cost estimates, under each scenario, assume implementation of waste minimization for filtering ''oily'' crude oil storage tank sediment (K169) and CSO sediment (K170) and recycling the oil filtrate back into process units. Revenues from the recycled oil are roughly estimated at about $1 million per year but are not included as an offset to costs in this table.

TABLE X–2.—SUMMARY OF COST OF COMPLIANCE

(1997 $millions per Year) [1,2]

Waste stream	Listing Scenario	LDR Scenario Option 1—Off-site Incineration of K169,K170 and Off-site Incineration and Vitrification of K171, K172	LDR Scenario Option 2—On-/Off-site Incineration of K169, K170 and Regeneration or Reclamation of K171, K172 [3]	Oil-Bearing Exclusion Scenario Including LDR Impact Option 1—De-oil K169, K170, ''Not Same Company'' Recycling to Coker, Off-site Incineration of Remaining Sludge, and Regeneration or Reclamation of K171, K172 [4]	Oil-Bearing Exclusion Scenario Including LDR Impact Option 2—De-oil D169, K170, ''Same Company'' Recycling to Coker, Off-site Incineration of Remaining Sludge, and Regeneration or Reclamation of K171, K172 [4]
	Average Cost [Low-High]	Average Cost [Low-High]	Average Cost [Low-High]	Average Cost [Low-High]	Average Cost [Low-High]
Crude Oil Storage Tank Sediment.	2.5 [1.1–4.4]	24.1 [10.4–43.3]	18.6 [9.0–31.6]	8.7 [4.1–14.9]	13.0 [5.9–22.6].
Clarified Slurry Oil Sediment.	3.1 [1.6–5.4]	25.1 [12.5–42.0]	18.8 [10.5–29.6]	8.1 [3.9–13.8]	13.5 [6.8–22.4].
Spent Hydrotreat- ing Catalyst.	1.5 [0.9–3.2]	5.6 [3.9–8.5]	2.6 [1.3–5.0]	2.6 [1.3–5.0]	2.6 [1.3–5.0].
Spent Hydrorefining Catalyst.	1.7 [0.8–4.2]	13.0 [9.3–18.4]	4.4 [2.1–8.8]	4.4 [2.1–8.8]	4.4 [2.1–8.8].
RCRA Administrative Costs.	0.6 [0.4–0.7]	0.6 [0.4–0.8]	0.9 [0.7–1.1]	0.6 [0.4–0.8]	0.6 [0.4–0.8].
Total	9.4 [4.8–17.9]	68.4 [36.5–113.0]	45.3 [23.6–76.1]	24.4 [11.8–43.3]	34.1 [16.5–59.6].

[1] Cost uncertainty (Low-High) is estimated using a +/−50% adjustment of any estimated quantities and a +/−25% adjustment of any estimated costs. Management practices and transportation unit costs were provided in the 1992 RCRA 3007 Questionnaire responses. If unit costs were not reported, an industry-based average unit cost was used. If data were not available to derive an industry-based average, EPA estimated a unit cost for the management practice based on previous listing determinations, land disposal restrictions analyses, and engineering cost documents. Compliance management practice, transportation, and RCRA administrative unit costs, prices, and cost equations were obtained from industry-based averages derived from the 1992 RCRA 3007 Questionnaire, previous listing determinations and land disposal restrictions analyses, and engineering cost documents.

[2] In the analysis, 1992 costs were inflated to 1997 dollars using an inflation factor of 1.11657. The inflation factor is based on Engineering News-Record construction (25% weighted) and common labor (75% weighted) cost indexes. The inflation factor is weighted towards labor factors because compliance costs are more operational in function. Costs are annualized assuming a discounted rate of 7% over a 20-year period.

[3] On-site incinerators are assumed only for those facilities that manage a large enough quantity of waste so that an on-site incinerator is more economical for the facility and which are currently in the RCRA program. All other facilities are assumed to continue managing wastes off-site.

[4] All crude oil storage tank sediment (K169) and CSO sediment (K170) wastes are assumed to be de-oiled in the cost estimate. The recovered oil is recycled back into process units. For those refineries that reported oil recovery fractions, that data were used. For refineries that did not provide data, using an industry average for crude oil storage tank sediment (K169) and CSO sediment (K170), 60 percent of the quantity entering the filtration unit is assumed to be recovered as oil and the remaining 40 percent goes on for further management. Of the remaining de-oiled sediment quantity (i.e., 40 percent fraction), 65 percent is assumed to be recycled into coking units. The remaining 35 percent is subject to Subtitle C management. If crude oil storage tank sediment (K169) and CSO sediment (K170) are recycled into coking units, they are assumed to be subject to the oil-bearing exclusion. Therefore, all storage, treatment, and transportation of these wastes are not subject to RCRA Subtitle C regulation. Option 1 reflects management of crude oil storage tank sediment (K169) and CSO sediment (K170) in coking units owned by any company (i.e., ''not same company''). Option 2 reflects management of crude oil storage tank sediment (K169) and CSO sediment (K170) in coking units as an option only within those companies that own them (i.e., ''same company'').

B. Details of Industry Economic Impact

As noted, a partial equilibrium model was used to estimate primary and secondary impacts from implementation of the listings. Primary economic impacts include changes in market equilibrium price and output levels, changes in the value of shipments or revenues to domestic producers, and plant closures. Secondary impacts include changes in employment, use of energy inputs, balance of trade, and regional refinery distribution. Impacts associated with the two Oil-Bearing Exclusion compliance scenarios will fall

between the range of primary and secondary economic impacts predicted for the Listing and LDR compliance scenarios as shown in Table X–2 (the low and high cost scenarios).

Predicted price increases and reductions in domestic output are less than 1 percent for the ten products evaluated under both the Listing and LDR compliance scenarios.[33] The projected 1992 price increase for the ten products combined ranges from 0.03 to 0.76 percent under the low- and high-cost scenarios, respectively.[34] Under the low- and high-cost scenarios, 1992 production is expected to decrease, ranging from 1.3 to 30.9 million barrels per year, representing a 0.02 to 0.59 percent decrease in annual production, respectively. The value of shipments or revenues for domestic producers are expected to increase for the ten products combined, ranging from $9.0 to $213 million (1992 dollars) annually for the low- and high-cost scenarios, respectively. This revenue increase results given that the percent increase in price exceeds the percent decrease in quantity for goods with inelastic demand. The model estimates that up to two refineries may close as a result of the predicted decrease in production under both regulatory scenarios. Those refineries with the highest per unit control costs are assumed to be marginal in the post-control market. No significant regional impacts are anticipated from implementation of the listings since only up to two facilities are anticipated to close and impacts overall are estimated to be minimal. Primary economic impacts are not anticipated to be significantly different in the later years of this decade and even beyond (even though 1992 data were used herein) in that the industry is mature and not one that changes often or dramatically absent an external shock.

Under the low- and high-cost scenarios, the number of workers employed in 1992 by firms in SIC 2911 are estimated to decrease ranging from 12 to 282 workers annually, representing a 0.03 and 0.59 percent decrease in total employment, respectively. The small magnitude of predicted job loss directly results from the relatively small decrease in production anticipated and the relatively low labor intensity in the industry. An estimated decrease in energy use ranging from $1.02 to $24.32 million ($1992) per year is expected for the industry, under the low- and high-cost scenarios, respectively. As production decreases, the amount of energy input utilized by the refining industry also declines. The change in energy use does not consider the increased energy use associated with operating and maintaining the regulatory control equipment due to the lack of available data. Finally, imposition of the listings will further increase the negative balance of trade. Under the low- and high-cost scenarios, net exports are anticipated to decline ranging from 0.2 to 4.7 million barrels per year, representing a 0.1 and 2.8 percent decline, respectively. The dollar value of the total decline in net exports ranges from $6.35 to $152.6 million ($1992) per year. Given the magnitude of the estimated compliance costs, refineries are expected to incur minimal economic impacts. Secondary economic impacts are not anticipated to be significantly different in 1997.

Economic impacts may be slightly underestimated as a result of the following model input changes:

The economic analysis was based on a lower CSO sediment quantity estimate of 9,000 MT/yr managed in final management practices. This quantity was revised to 13,100 MT/yr. As a result, impacts for facilities generating this sediment are underestimated for all scenarios.

The regulatory options (i.e., waste management options) used to evaluate economic impacts differ slightly from those that were used to calculate the cost of compliance for the lower- and upper-bound LDR Scenarios, such that waste management costs were understated by $3 and $31 million ($1992), respectively. As a result, economic impacts may be understated for the lower- and upper-bound LDR Scenarios. However, the Oil-Bearing Exclusion Scenario, with estimated costs from $31 to $67 million ($1992) and an expected value of $45 million, fall within the range of costs used in the economic impact analysis for the LDR Scenarios. Therefore, the lower-and upper-bound LDR Scenarios bound the anticipated cost of the rule (i.e., the Oil-Bearing Exclusion Scenario).

Economic impacts may be overestimated as a result of the following model assumptions:

The model assumes that all refineries compete in a national market. In reality, some refineries are protected from market fluctuations by regional or local trade barriers and may therefore be less likely to feel impact.

The total cost of compliance is assigned exclusively to ten petroleum products, rather than the entire product slate for each refinery.

Some refineries may find it profitable to expand production in the post-control market. This would occur when a firm found its post-control incremental unit cost to be smaller than the post-control market price. Expansion by these firms would result in a smaller decrease in output and increase in price than otherwise would occur.

The economic analysis was initially based on the listing of five waste streams including unleaded gasoline sediment, which has since been removed from the list of wastes included in this listing determination. As a result, economic impacts for the 98 facilities generating unleaded gasoline sediment will be overestimated.

With the combined effects of analyzing five waste streams and using a lower CSO sediment quantity and a less costly upper-bound LDR Scenario management option, the total cost of compliance for the Listing Scenario is understated by $2 million and the lower-bound and upper-bound LDR Scenarios are understated by $5 million and $31 million ($1992), respectively. As a result, economic impacts may be understated for the Listing and LDR Scenarios. However, as noted, economic impacts estimated for the Listing and LDR scenarios bound the anticipated economic impacts associated with the Oil-Bearing Exclusion Scenario.

Under any realistic set of assumptions associated with this listing, industry economic impact is likely to be very slight. The results of the economic impact analysis are summarized in Table X–3.

TABLE X–3.—SUMMARY OF ECONOMIC IMPACTS [1, 2]

Economic impacts	Listing scenario lower-bound	LDR scenario lower-bound	LDR scenario upper-bound
Primary Economic Impacts			
Average Price Increase:			
Over All Products	0.03%	0.08%	0.76%

[33] The ten petroleum products include ethane/ethylene, butane/butylene, normal butane/butylene, isobutane/isobutylene, finished motor gasoline, jet fuel, distillate and residual fuel oil, asphalt, and petroleum coke.

[34] Similar percentage increases would apply to current prices.

TABLE X–3.—SUMMARY OF ECONOMIC IMPACTS [1, 2]—Continued

Economic impacts	Listing scenario lower-bound	LDR scenario lower-bound	LDR scenario upper-bound
Annual Production Decrease:			
Amount (MMbbl)	(1.3)	(3.27)	(30.93)
Percentage Change	(0.03%)	(0.06%)	(0.59%)
Annual Value of Shipments			
Amount (MM$92)	$9.0	$22.59	$213.34
Percentage Change	0.01%	00.02%	0.16%
Number of Plant Closures	0–2	0–2	0–2
Secondary Economic Impacts			
Annual Job Loss:.			
Number	(12)	(30)	(282)
Percentage Change	(0.03%)	(0.06%)	(0.59%)
Annual Decrease In Energy Use:			
Amount (MM$92)	($1.02)	($2.57)	($24.32)
Percentage Change	(0.03%)	(0.06%)	(0.59%)
Annual Net Foreign Trade Loss:			
Amount (MMbbl)	(0.20)	(0.49)	(4.70)
Percentage Change	(0.12%)	(0.3%)	(2.8%)
Dollar Value ($/MMbbl)	($6.35)	($15.96)	($152.60)

[1] Assumes listing of five waste streams: crude oil storage tank sediment, clarified slurry oil sediment, unleaded tank sediment, spent hydrotreating catalyst, and spent hydrorefining catalyst. Unleaded tank sediment was not listed. Impact will be reduced with four.

[2] The analysis was conducted using 1992 cost and price data. Costs and prices were not inflated to 1997 dollars and the economic impact analysis was not revised because the economic impacts are not anticipated to change significantly. Anticipated costs with the granting of a oil-bearing exclusion fall within the range used in the economic impact analysis.

XI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 as amended by SBREFA requires Federal agencies to consider ''small entities'' throughout the regulatory process. EPA policy suggests that an initial screening analysis be performed to determine whether small entities will be affected by the regulation. If affected small entities are identified, regulatory alternatives should be considered which mitigate the potential impacts. Small entities as described in the Act are only those ''businesses, organizations and governmental jurisdictions subject to regulation.'' In addition, the Agency must prepare an IRFA, unless the head of the Agency certifies that the rule will not have a *significant* impact on a *substantial* number of small entities.

The Small Business Administration (SBA) size standards criteria apply to firm size, whereas the economic impact analysis for this rulemaking was conducted at the facility level (i.e., refinery level). Few companies employ more than 1,500 employees, and data on the number of employees at company level were much less readily available than were capacity data. For single-plant firms, the SBA criteria were applied directly. For firms (i.e., companies) owning more than one refinery, crude capacity was aggregated for all plants (i.e., refineries) to determine the overall size of the company.[35] Despite the high percentage of small entities in the population of refinery companies affected by the listing determination, anticipated impacts as a result of implementation of the listings were minimal, with a maximum of two plant closures predicted under the most conservative assumptions used in each of the scenarios evaluated.

Of the 66 affected companies, 32 entities fit the definition of a small entity as defined by the RFA. Table XI–1 presents the estimated annualized incremental compliance costs borne by the 32 small businesses in the petroleum refining industry. The annual incremental cost of the rule for the 32 facilities ranged from $4,566 to $11.8 million (1992 dollars). For each of the 32 facilities impacted, these annual costs constitute less than 0.96 percent of total annual sales. EPA believes that these costs do not represent a significant impact. Hence, pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

[35] According to ''EPA Guidelines for Implementing the Regulatory Flexibility Act'' (February, 1997) and the Small Business Size Regulations (13 CFR 121), any refinery that produces petroleum products (SIC 2911) of less than or equal to 75,000 barrels of crude per day and has no more than 1,500 employees, constitutes a ''small entity.'' The Agency believes that none of the entities which would incur incremental compliance costs as a result of this rulemaking produce more than 75,000 barrels and have less than 1,500 employees.

XII. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. § 804(2). This rule will be effective six months from the date of publication.

TABLE XI–1.—RESULTS OF THE REGULATORY FLEXIBILITY ANALYSIS [a]

Summary of economic impacts on small entities			
	Listing scenarios	LDR scenario lower bound	LDR scenario upper-bound
Range of Annualized Compliance Costs	$4,566–$305,379	$4,556–$7,561,781	$4,556–$11,765,904
Range of Annual Company Refinery Sales	$19,377,340–$1,218,936,710		
Range of Annualized Compliance Costs as a Percentage of Company Refinery Sales	0.001%–0.236%	0.001%–0.620%	0.001%–0.965%

[a] The analysis was conducted using 1992 cost and price data. Costs and prices were not inflated to 1997 dollars and the analysis was not revised because the anticipated impacts would still be insignificant.

XIII. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA'') signed into law on March 22, 1995, The EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more in any one year. Section 203 requires the epa to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Under section 205, agencies also must develop a process to permit elected State, local, and tribal government officials to provide ''meaningful and timely input'' into the development of regulatory proposals ''containing significant intergovernmental mandates.'' In addition, agencies must consider a ''reasonable number of regulatory alternatives'' and select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the provisions of the alternative are inconsistent with the law or an explanation is provided by the head of the affected agency.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. The rule would not impose any Federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal, or local governments. States, tribes, and local governments would have no compliance costs under this rule, which applies only to facilities managing the listed petroleum production wastes. It is expected that States will adopt similar rules and submit those rules for inclusion in their authorized RCRA programs, but they have no legally enforceable duty to do so. For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million in any one year. The upper-bound of the range of potential average annual costs is estimated to be $60 million ($1997) with the granting of an oil-bearing exclusion, considerably below the $100 million annual threshold. The Agency believes that this average annual cost represents the typical cost for any given year and that this rulemaking will not result in a spike in annual cost that might rise above $100 million in any given year above for the following reasons. First, compliance with these new requirements does not involve significant capital costs which could generate such a spike. Treatment and disposal capacity for these wastes already exist and the typical costs incurred come from treatment and disposal on a routine basis. Second, waste generation rates for these wastes are expected to be relatively constant over time. No signficant surge in generation of the wastes listed in this rule involving a concomitant increase in costs are anticipated.

XIV. Paperwork Reduction Act

This rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Facilities will have to comply with the existing Subtitle C recordkeeping and reporting requirements for the newly listed waste streams.

To the extent that this rule imposes any information collection requirements under existing RCRA regulations promulgated in previous rulemakings, those requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–0009 (ICR no. 1573, Part B Permit Application, Permit Modifications, and Special Permits); 2050–0120 (ICR 1571, General Facility Hazardous Waste Standards); 2050–0028 (ICR 261, Notification of Hazardous Waste Activity); 2050–0034 (ICR 262, RCRA Hazardous Waste Permit Application and Modification, Part A); 2050–0039 (ICR 801, Requirements for Generators, Transporters, and Waste Management Facilities under the Hazardous Waste Manifest System); 2050–0035 (ICR 820, Hazardous Waste Generator Standards); and 2050–0024 (ICR 976, 1997 Hazardous Waste Report.

Release reporting required as a result of listing wastes as hazardous substances under CERCLA and adjusting the RQs has been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has been assigned OMB control number 2050–0046 (ICR 1049, Notification of Episodic Release of Oil and Hazardous Substances).

XV. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

XVI. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

The Executive Order 13045 is entitled ''Protection of Children from

Environmental Health Risks and safety Risks (62 FR 19885, April 23, 1997). This Order applies to any rule that EPA determines (1) is ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency

This final rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866.

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Boilers and industrial furnaces, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 29, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Secs. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.18 is amended by adding paragraph (i) to read as follows:

§ 148.18 Waste specific prohibitions—newly listed and identified Wastes.

* * * * *

(i) Effective February 8, 1999, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K169, K170, K171, and K172 are prohibited from underground injection.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

4. Section 261.3 is amended by revising paragraphs (a)(2)(iv)(C) and (c)(2)(ii)(B); and by adding paragraph (c)(2)(ii)(E) to read as follows.

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(iv) * * *

(C) One of the following wastes listed in § 261.32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation—heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050), crude oil storage tank sediment from petroleum refining operations (EPA Hazardous Waste No. K169), clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations (EPA Hazardous Waste No. K170), spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and spent hydrorefining catalyst (EPA Hazardous Waste No. K172); or

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) Waste from burning any of the materials exempted from regulation by § 261.6(a)(3)(iii) and (iv).

* * * * *

(E) Catalyst inert support media separated from one of the following wastes listed in § 261.32—Spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172).

* * * * *

5. In § 261.4, new paragraphs (a)(18) and (a)(19) are added, and paragraph (a)(12) is revised to read as follows:

* * * * *

§ 261.4 Exclusions.

(a) * * *

(12) (i) Oil-bearing hazardous secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911—including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in paragraph (a)(12)(ii) of this section, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph (a)(12)(i), where such materials as generated would have otherwise met a listing under subpart D of this part, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in paragraph (a)(12)(i) of this section. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172.) Recovered oil does not include oil-bearing hazardous wastes listed in subpart D of this part; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 40 CFR 279.1.

* * * * *

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in § 261.21) and/or toxicity for benzene (§ 261.24, waste code D018); and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An ''associated organic chemical manufacturing facility'' is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. ''Petrochemical recovered oil'' is oil that has been reclaimed from secondary materials (i.e., sludges, byproducts, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in § 261.1(c).

* * * * *

§ 261.6 [Amended]

6. In § 261.6, paragraph (a)(3)(iv)(C) is amended by removing ''; and'' at the end of the paragraph and adding a period in its place; and paragraph (a)(3)(v) is removed.

7. In § 261.31(a), the table is amended by revising the entry for F037, to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	* * * * * *	*
F037	Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow, sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under § 261.4(a)(12)(i), if those residuals are to be disposed of.	(T)
*	* * * * * *	*

* * * * * * *

8. In § 261.32, the table is amended by adding in alphanumeric order (by the first column) the following waste streams to the subgroup ''Petroleum refining'' to read as follows:

§ 261.32 Hazardous wastes from specific sources.

* * * * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	* * * * * *	*
Petroleum refining:		
*	* * * * * *	*
K169	Crude oil storage tank sediment from petroleum refining operations	(T)
K170	Clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations	(T)
K171	Spent Hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media).	(I,T)
K172	Spent Hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media).	(I,T)
*	* * * * * *	*

9. Appendix VII to Part 261 is amended by adding the following waste streams in alphanumeric order (by the first column) to read as follows.

APPENDIX VII TO PART 261—BASIS FOR LISTING HAZARDOUS WASTE

EPA hazardous waste No.	Hazardous constituents for which listed
*	* * * * * *
K169	Benzene.
K170	Benzo(a)pyrene, dibenz(a,h)anthracene, benzo (a) anthracene, benzo (b)fluoranthene, benzo(k)fluoranthene, 3-methylcholanthrene, 7, 12-dimethylbenz(a)anthracene.
K171	Benzene, arsenic.
K172	Benzene, arsenic.

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

The authority citation for part 266 is revised to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3004, and 3014, 6905, 6906, 6912, 6922, 6924, 6925, and 6937.

11. Section 266.100(b)(3) is revised to read as follows:

§ 266.100 Applicability.

* * * * *

(b)* * *

(3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3) (iii) and (iv) of this chapter, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under § 261.5 of this chapter; and

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

12. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart C—Prohibitions on Land Disposal

13. Section 268.35 is added to subpart C to read as follows:

§ 268.35 Waste specific prohibitions-petroleum refining wastes.

(a) Effective February 8, 1999, the wastes specified in 40 CFR part 261 as EPA Hazardous Wastes Numbers K169, K170, K171, and K172, soils and debris contaminated with these wastes, radioactive wastes mixed with these hazardous wastes, and soils and debris contaminated with these radioactive mixed wastes, are prohibited from land disposal.

(b) The requirements of paragraph (a) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in Subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under § 268.44;

(4) Hazardous debris that have met treatment standards in § 268.40 or in the alternative treatment standards in § 268.45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(c) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable Universal Treatment Standard levels of § 268.48, the waste is prohibited from land disposal, and all requirements of this part are applicable, except as otherwise specified.

Subpart D—Treatment Standards

14. In § 268.40, the Table of Treatment Standards is amended by adding in alphanumeric order new entries for K169, K170, K171, and K172 to read as follows. The appropriate footnotes to the Table of Treatment Standards are republished without change.

§ 268.40 Applicability of treatment standards.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable]

Waste code	Waste description and treatment/ regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common Name	CAS [2] No.	Concentration in mg/L[3]; or technology code [4]	Concentration in mg/kg [5] unless noted as ''mg/L TCLP''; or technology code [4]
*	*	*	*	*	*
K169	Crude oil tank sediment from petroleum refining operations.	Benz(a)anthracene	56–55–3	0.059	3.4
		Benzene	71–43–2	0.14	10
		Benzo(g,h,i)perylene	191–24–2	0.0055	1.8
		Chrysene	218–01–9	0.059	3.4
		Ethyl benzene	100–41–4	0.057	10
		Fluorene	86–73–7	0.059	3.4
		Naphthalene	91–20–3	0.059	5.6
		Phenanthrene	81–05–8	0.059	5.6
		Pyrene	129–00–0	0.067	8.2
		Toluene (Methyl Benzene)	108–88–3	0.080	10
		Xylene(s) (Total)	1330–20–7	0.32	30
K170	Clarified slurry oil sediment from petroleum refining operations.	Benz(a)anthracene	56–55–3	0.059	3.4
		Benzene	71–43–2	0.14	10
		Benzo(g,h,i)perylene	191–24–2	0.0055	1.8
		Chrysene	218–01–9	0.059	3.4
		Dibenz(a,h)anthracene	53–70–3	0.055 8.2.	
		Ethyl benzene	100–41–4	0.057	10
		Fluorene	86–73–7	0.059	3.4
		Indeno(1,2,3,-cd)pyrene	193–39–5	0.0055	3.4
		Naphthalene	91–20–3	0.059	5.6
		Phenanthrene	81–05–8	0.059	5.6
		Pyrene	129–00–0	0.067	8.2
		Toluene (Methyl Benzene)	108–88–3	0.080	10
		Xylene(s) (Total)	1330–20–7	0.32	30
K171	Spent hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media.).	Benz(a)anthracene	56–55–3	0.059	3.4
		Benzene	71–43–2	0.14	10
		Chrysene	218–01–9	0.059	3.4
		Ethyl benzene	100–41–4	0.057	10
		Naphthalene	91–20–3	0.059	5.6
		Phenanthrene	81–05–8	0.059	5.6
		Pyrene 129–00–0	0.067	8.2.	
		Toluene (Methyl Benzene)	108–88–3	0.080	10
		Xylene(s) (Total)	1330–20–7	0.32	30
		Arsenic	7740–38–2	1.4	5 mg/L TCLP
		Nickel	7440–02–0	3.98	11.0 mg/L TCLP
		Vanadium	7440–62–2	4.3	1.6 mg/L TCLP
		Reactive sulfides	NA	DEACT	DEACT
K172	Spent hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors (this listing does not include inert support media.).	Benzene	71–43–2	0.14	10
		Ethyl benzene	100–41–4	0.057	10
		Toluene (Methyl Benzene)	108–88–3	0.080	10
		Xylene(s) (Total)	1330–20–7	0.32	30
		Antimony	7740–36–0	1.9	1.15 mg/L TCLP
		Arsenic	7740–38–2	1.4	5 mg/L TCLP
		Nickel	7440–02–0	3.98	11.0 mg/L TCLP
		Vanadium	7440–62–2	4.3	1.6 mg/L TCLP
		Reactive Sulfides	NA	DEACT	DEACT

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable]

Waste code	Waste description and treatment/ regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common Name	CAS [2] No.	Concentration in mg/L[3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/L TCLP"; or technology code [4]
*	*	*	*	*	*	*

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, Subpart O or part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

15. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

16. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, and by adding the following entries to Table 2 in chronological order by effective date in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
August 6, 1998	Petroleum Refining Process Wastes	[Insert FR page numbers]	February 8, 1999.
*	*	*	*

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
*	*	*	*
February 8, 1999	Prohibition on land disposal of newly listed and identified wastes; and prohibition on land disposal of radioactive waste mixed with the newly listed or identified wastes, including soil and debris.	3004(g)(4) (C) and 3004 (m)	August 6, 1998. 63 FR [Insert page numbers]
*	*	*	*

* * * * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

17. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

18. In § 302.4, table 302.4 is amended by adding footnote f and the following new entries in alphanumerical order at the end of the table to read as follows:

§ 302.4 Designation of hazardous substances.

* * * * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[NOTE: All Comments/Notes Are Located at the End of This Table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Code†	RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
*	*	*	*	*	*	*	*
K169[f] Crude oil storage tank sediment from petroleum refining operations.	.....	.....	[1]*	4	K169	A	10(4.54)
K170[f] Clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations.	.....	.....	[1]*	4	K170	X	1 (0.454)
K171[f] Spent hydrotreating catalyst from petroleum refining operations. (This listing does not include inert support media.)	.....	.....	[1]*	4	K171	X	1 (0.454)
K172[f] Spent hydrorefining catalyst from petroleum refining operations. (This listing does not include inert support media.)	.....	.....	[1]*	4	K172	X	1 (0.454)

† Indicates the statutory sources as defined by 1, 2, 3, and 4 below.

* * * * * * *

[1]*—Indicates that the 1-pound RQ is a CERCLA statutory RQ.

* * * * * * *

[f] See 40 CFR 302.6(b)(1) for application of the mixture rule to this hazardous waste.

19. Section 302.6 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) and by adding paragraph (b)(1)(iii) to read as follows:

§ 302.6 Notification requirements.

* * * * *

(b) * * *

(1) * * *

(i) If the quantity of all of the hazardous constituent(s) of the mixture or solution is known, notification is required where an RQ or more of any hazardous constituent is released;

(ii) If the quantity of one or more of the hazardous constituent(s) of the mixture or solution is unknown, notification is required where the total amount of the mixture or solution released equals or exceeds the RQ for the hazardous constituent with the lowest RQ; or

(iii) For waste streams K169, K170, K171, and K172, knowledge of the quantity of all of the hazardous constituent(s) may be assumed, based on the following maximum observed constituent concentrations identified by EPA:

Waste	Constituent	Max ppm
K169	Benzene	220.0
K170	Benzene	1.2
	Benzo (a) pyrene	230.0
	Dibenz (a,h) anthracene	49.0
	Benzo (a) anthracene	390.0
	Benzo (b) fluoranthene	110.0
	Benzo (k) fluoranthene	110.0
	3-Methylcholanthrene	27.0
	7,12-Dimethylbenz (a) anthracene	1,200.0
K171	Benzene	500.0
	Arsenic	1,600.0
K172	Benzene	100.0
	Arsenic	730.0

* * * * *

[FR Doc. 98–19929 Filed 8–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6127–9]

RIN 2050–AD88

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities; Notice of Data Availability

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of data availability and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is making available for public comment information relating to its Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on November 20, 1995 (60 FR 57747). That NPRM proposed to amend EPA regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous wastes certain petroleum refining waste streams, and to apply universal treatment standards under the Land Disposal Restrictions program to the wastes proposed for listing. That NPRM also proposed to broaden existing RCRA exclusions for the recycling of oil-bearing residuals in petroleum refineries.

Several weeks before the date of signature of the final rule published elsewhere in this issue of the **Federal Register**, EPA received specific information from one company that owns and operates non-hazardous waste landfills, some of which received one or more of the petroleum wastes which the Agency was proposing to list. This company realized belatedly that, after the effective date of the new listings for these petroleum wastes, the leachate generated from these landfills would carry the waste code for one or more of the newly-listed hazardous wastes, and could be subject to Subtitle C regulation if collected and actively managed.

EPA is not reopening its settled position that when a waste is listed as hazardous, all wastes meeting the listing description, including those disposed before the listing effective date, are now classified as the listed hazardous waste. The same applies to wastes derived from the treatment, storage, or disposal of those wastes (again, a settled position not being reopened). Subtitle C regulation can apply to such wastes, and to residues derived from such wastes, if active management occurs after the date the listings become effective (likewise a settled position not being reopened). However, the late information does present a legitimate issue as to whether, under limited circumstances, the listings should apply to leachate derived from management of these particular wastes. This is because to the extent these leachates are being adequately managed under the Clean Water Act (CWA) program, the EPA would prefer to minimize any possible disruptions to the management of this leachate, and try to integrate the RCRA and CWA regulatory schemes if possible. There is also an ongoing rulemaking activity under the Clean Water Act that directly addresses pretreatment standards and effluent limitations for indirect and direct discharges of such leachates. Because this issue was brought to EPA's attention so late, and for other reasons discussed in this document, EPA believes it needs more time to determine how best to coordinate these programs with respect to this leachate. Therefore, EPA is presenting the pertinent information it has received on this question and soliciting comment on the general issue of whether the Agency should temporarily defer application of these four new petroleum waste codes (published elsewhere in today's **Federal Register**) to leachate from previously disposed wastes that now meet the listing description, provided the leachate is treated at Publicly Owned Treatment Works (POTW) or treated to meet effluent limitations for direct discharge, pending further study of this issue.

DATES: The Agency is reopening the comment period only for the limited purpose of obtaining information and views on the new data and information described in this document. Comments on the additional data will be accepted through September 8, 1998. This document does not reopen the comment period for the recently proposed rulemaking on effluent guidelines and pretreatment standards for landfills (63 FR 6426; February 6, 1998).

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–PR3A–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcradocket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–PR3A–FFFFF.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. For information on accessing paper and/or electronic copies of the document, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For information on specific aspects of this document, contact Ross Elliott or Robert Kayser, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street comment, SW, Washington, DC 20460. (E-mail addresses and telephone numbers: elliott.ross@epamail.epa.gov, (703) 308–8748; kayser.robert@epamail.epa.gov, (703) 308–7304).

SUPPLEMENTARY INFORMATION: All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. If comments are not submitted electronically, EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it

result in any advantage or disadvantage to any commenter.

The official record for this action will be kept in paper form, and will be maintained at the address in **ADDRESSES** at the beginning of this document. The index to the docket is available on the Internet. Follow these instructions to access the information electronically:

www: http://www.epa.gov/epaoswer/osw/hazwaste.htm#id
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

In addition, the document entitled *Development Document for Proposed Effluent Limitations Guidelines and Standards for the Landfills Point Source Category*, EPA–821–R–97–022, January 1998, placed in the docket for this document, can be obtained through the internet at www.epa.gov/OST/Rules/2lndfls/techdev.html. EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record.

EPA responses to comments, whether the comments are written or electronic, will be in a document published in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking at the same time this document is published in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Background

Very late in the rulemaking process, the Agency was alerted to the concern (not raised by any commenter during the comment period) that any new hazardous waste listings for petroleum wastes may have potentially significant (but as yet undetermined) impacts on the management of leachate collected from certain non-hazardous waste landfills. Specifically, one company that owns and operates non-hazardous waste landfills expressed concern that because some of their facilities have historically received and disposed of some or all of the waste streams listed in the final rulemaking (*i.e.*, K169, K170, K171, and K172) (published elsewhere in today's **Federal Register**), the leachate that is collected and managed from these landfills would be classified by these same waste codes after the effective date of the new petroleum waste listings. However, if Subtitle C regulation were to apply to leachate generated from such landfills, leachate now trucked to POTWs (a practice of particular concern with this company) would, as a practical matter, no longer be managed by POTWs, since POTWs would not wish to become facilities subject to RCRA Subtitle C regulation. This company argued that this could lead to vastly increased treatment and disposal costs without necessarily any environmental benefit. EPA is considering whether it would be appropriate to defer temporarily the application of the new petroleum waste codes to such leachate in order to avoid disruption of ongoing leachate management activities while the Agency decides how to integrate the two regulatory schemes, consistent with RCRA section 1006(b)(1) (which requires EPA to integrate regulations under RCRA with those of the other statutes implemented by EPA in a manner that avoids duplication to the maximum extent possible, consistent with the goals and policies of RCRA and the other statutes).

Applicability of New Listings to Landfill Leachate

Leachate that is derived from the treatment, storage, or disposal of listed hazardous wastes is classified as a hazardous waste by virtue of the ''derived-from'' rule in 40 CFR 261.3(c)(2). The Agency has been very clear in the past on the applicability of hazardous waste listings to wastes disposed of prior to the effective date of a listing, even if the landfill ceases disposal of the waste when the waste becomes hazardous. 53 FR at 31147 (August 17, 1988). EPA also has a well-established interpretation that listings likewise apply to leachate derived from the disposal of listed hazardous wastes, including leachate derived from wastes disposed before a listing effective date which meet the listing description. *Id.* EPA's interpretations were emphatically upheld by the Court of Appeals for the District of Columbia Circuit in *Chemical Waste Management, Inc.* v. *EPA*, 869 F.2d 1526, 1536–37 (D.C. Cir. 1989). None of these issues is reopened by the present Notice.

Of course, as set out in detail in the August 1988 notice, this does not mean that landfills holding wastes which are now listed as hazardous become subject to Subtitle C regulation. However, previously disposed wastes now meeting the listing description, including residues such as leachate which are derived from such wastes, which are actively managed do become subject to Subtitle C regulation. 53 FR at 31149. In many, indeed most circumstances, active management of leachate would be exempt from Subtitle C regulation because the usual pattern of management is discharge either to POTWs via the sewer system, where leachate mixes with domestic sewage and is excluded from RCRA jurisdiction (see RCRA Section 1004(27) and 40 CFR 261.4(a)(1)), or to navigable waters, also excluded from RCRA jurisdiction (see RCRA Section 1004(27) and 40 CFR 261.4(a)(2)). In addition, management of leachate in wastewater treatment tanks prior to discharge under the CWA is also exempt from RCRA regulation (40 CFR 264.1(g)(6)).

The company indicated, however, that these exemptions do not apply to its current prevalent means of managing its leachate: collection followed by transport by truck to a POTW (rather than discharge to a POTW by a sewer system, where leachate would mix with domestic sewage, which would not trigger Subtitle C, as just explained). The company also alleged that it would incur large costs because POTWs would no longer accept the leachate in order to remain outside the Subtitle C regulatory system. (The company is probably correct as to POTWs' reaction, although the potential costs the company could incur have not yet been verified.)

Proposed Clean Water Act Requirements for Leachate from Non-Hazardous Waste Landfills

EPA's Office of Water recently proposed national effluent limitations guidelines and pretreatment standards for wastewater discharges (*e.g.*, leachate) from certain types of landfills. 63 FR 6426 (February 6, 1998). In support of this proposal, EPA conducted a study of the volume and chemical composition of wastewaters generated by both Subtitle C (hazardous waste) and Subtitle D (non-hazardous waste) landfills, including treatment technologies and management practices currently in use. EPA did not propose pretreatment standards for Subtitle D landfill wastewaters sent to POTWs because the Agency's information indicated that such standards were not required due to several factors, including: (1) Raw leachate data was below published biological inhibition levels, and (2) lack of pass-through of toxics (including lack of showing of adverse impact on POTW sludge quality). 63 FR at 6444. For example, the EPA determined, among other things, that ''the majority of pollutants typically found in raw [non-hazardous landfill] leachate were at levels comparable to wastewater typically found at the headworks of a POTW.'' *Id*. EPA also

proposed effluent limitations for direct discharges of leachate from nonhazardous waste landfills. After examining various pollutants of concern (including conventional, nonconventional, metal, and organic pollutants), EPA proposed limitations for nine pollutants. 63 FR at 6463. EPA believes that the proposed rules, if promulgated, will help ensure that leachate is managed effectively while any temporary exemption is in effect.

Consideration of Temporary Deferral of Applying New Petroleum Waste Codes to Leachate

Because EPA received this information very late in the rulemaking process (indeed, the information is not even part of the administrative record for the final rule), EPA needs more time to evaluate the potential impacts of the newly-listed waste codes (published in a final rule elsewhere in today's **Federal Register**) on the classification of landfill leachate, and to carefully consider whether or not it is appropriate to apply the waste codes from one or more of the four newly-listed petroleum wastes to landfill leachate which is either sent for treatment at POTWs under circumstances not excluded by Section 261.4(a)(1)(ii), or is directly discharged under Section 402 of the CWA. As mentioned above, EPA believes it would be appropriate to defer temporarily the application of the new petroleum waste codes to such leachate in order to avoid disruption of ongoing leachate management activities while the Agency decides how to integrate the two regulatory schemes, consistent with RCRA section 1006(b)(1) (regarding integrating RCRA regulations with other EPA statutes). See *Edison Electric Inst.* v. *EPA*, 2 F. 3d 438, 451–53 (D.C. Cir. 1993) (temporary deferral of regulation to determine how best to integrate RCRA rules with another EPA regulatory system is permissible); see also *Military Toxics Project* v. *EPA* (No. 97–1342 (D.C. Cir. June 30, 1998) (slip op. pp. 18–20) (permanent deferral to another regulatory system also may be appropriate). As stated above, it appears that leachate derived from these newly-listed wastes will be adequately regulated under the CWA. The Agency is publishing this document in order to make this information available, and to receive comment on EPA temporarily deferring, while EPA assesses the permanent integration of the two regulatory schemes, the application of the new waste codes (K169, K170, K171, and K172) to landfill leachate that is generated and actively managed after the effective date of the four new petroleum listings, as long as all of the following conditions apply.

First, the Agency is considering only whether to temporarily defer from RCRA regulation leachate from landfills that received and disposed one or more of the newly-listed petroleum wastes prior to the effective date of the listing (*i.e.*, landfills that have historically disposed of these petroleum wastes, which if generated today would meet the new listing descriptions, but no longer accept these wastes). Second, this temporary deferral would apply to leachate that is defined as hazardous waste only by application of one or more of the new petroleum waste codes, *i.e.*, leachate that is only defined as hazardous waste because it is derived from K169, K170, K171, or K172, and is not derived from any other listed waste, and does not exhibit any characteristic of hazardous waste. Third, the Agency would only temporarily defer from RCRA regulation leachate that is managed such that discharge is subject to regulation under 307(b) or 402 of the Clean Water Act (*i.e.*, for indirect or direct discharges). This temporary deferral would apply to leachate from point of generation (*i.e.*, when the leachate is first collected or ''actively managed'') to when it is discharged in compliance with 307(b) or 402 of the Clean Water Act.

EPA is also considering whether to add a condition that would prohibit the placement of leachate on the land prior to discharge to a POTW or to other wastewater treatment systems. EPA is concerned that the storage of untreated leachate in land-based units, such as surface impoundments, may be of concern. On the other hand, the Agency does not wish to discourage effective treatment of the leachate in wastewater treatment systems that employ secure impoundments prior to discharge to surface water. To resolve this question, the Agency is seeking comment on the potential impact of such a condition on the treatment of leachate at landfills and other treatment facilities.

Should the Agency proceed with a temporary deferral, such a deferral would most likely be implemented as a new exemption from the definition of hazardous waste under 40 CFR 261.4(b). The duration of a temporary deferral would probably be at least until the Agency completes the pending rulemaking under the Clean Water Act described in this document. After completion of the Clean Water Act rulemaking, EPA will consider whether to initiate a rulemaking for a permanent deferral (*i.e.*, exemption), or alternatively, to remove the exemption and subject the leachate to Subtitle C regulation.

Information in the Docket and Request for Comment

The EPA has placed in the docket summary information on leachate characterization submitted by one company that owns and/or operates over sixty non-hazardous waste landfills, and estimated costs reflecting Subtitle C management of the leachate (*i.e.*, centralized waste treatment of leachate diverted from current management at POTWs). The EPA has also put into the docket a copy of the Office of Water background document entitled *Development Document for Proposed Effluent Limitations Guidelines and Standards for the Landfills Point Source Category*, EPA–821–R–97–022, January 1998.

The Agency is interested in any comments on the narrow issue of the classification and management of leachate generated from landfills that disposed of one or more of the newly-listed petroleum wastes (K169–K172) prior to the effective date of those listings, where the leachate is not defined as hazardous under RCRA for any other reason, and is (in particular) being managed pursuant to Clean Water Act requirements. The Agency also seeks comment on the possibility of the temporary deferral described in this document. EPA will not respond to comment regarding the general proposition that hazardous listings apply to previously disposed wastes that meet the listing description, nor will EPA reopen comments on the listings of these wastes, which are issued in a final rule elsewhere in today's **Federal Register**.

Dated: July 17, 1998.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 98–19930 Filed 8–5–98; 8:45 am]

BILLING CODE 6560–50–P

federal register

Thursday
August 6, 1998

Part III

Environmental Protection Agency

Availability of Water Conservation Plan Guidelines; Notice

ENVIRONMENTAL PROTECTION AGENCY

[No. W–98–14; FRL–6137–5]

Availability of Water Conservation Plan Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: Section 1455 of the Safe Drinking Water Act (SDWA) as amended in 1996 requires the Agency to publish guidelines for water conservation plans for public water systems, taking into consideration such factors as system size, water availability and climate by August 6, 1998. States may require water systems to submit a water conservation plan consistent with EPA's guidelines as a condition of receiving a loan from a State Drinking Water Loan Fund. Today, EPA is making available a document entitled ''Water Conservation Plan Guidelines.''

DATES: The Guidelines are effective on August 6, 1998. After August 6, 1999, States may require water systems to submit a water conservation plan consistent with these guidelines as a condition of receiving a loan from a State Drinking Water Loan Fund.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for electronic access, and telephone and facsimile requests. Paper copies of the Guidelines may be obtained by writing to Office of Water Resource Center (Mail Code RC4100), U. S. EPA, 401 M Street, S.W., Washington D. C. 20460. Further information on the Guidelines may be obtained by writing to John E. Flowers (Mail Code 4204), U. S. EPA, 401 M Street, S.W., Washington D. C. 20460.

Docket: The administrative record for this notice (docket number W–98–14) is located in the Water Docket, East Tower Basement, U. S. EPA, 401 M Street, S.W., Washington, D. C. 20460.

FOR FURTHER INFORMATION CONTACT: John E. Flowers, (202) 260–7288 or flowers.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

1. Development of the Guidelines

EPA developed the Guidelines through a broad-based, open and participatory process. A public workshop was held in Denver, CO in September 1997. EPA also established a Subcommittee under the auspices of the Local Government Advisory Committee (LGAC). The Subcommittee met four times and held one conference call. Membership included State agencies, water utilities, local governments, environmental groups, and various industry and public interest groups. EPA announced a 30-day public comment period for the draft Guidelines in the **Federal Register** on April 21, 1998. We have made changes to the Guidelines to respond to comments.

2. Description of the Guidelines

The Water Conservation Plan Guidelines document is organized into six parts. The first part introduces the Guidelines and provides information to the States about their nature and possible use. The second part, written for water systems, is an overview of the organization, content and use of the Guidelines. The next three parts of the document contain the water conservation plan guidelines—Basic, Intermediate, and Advanced—which correspond generally to water system size. The Basic Guidelines contain five simplified planning steps. The Intermediate and Advanced Guidelines follow nine planning steps: Specify Conservation Planning Goals, Develop Water System Profile, Prepare Demand Forecast, Describe Planned Facilities, Identify Conservation Measures, Analyze Benefits and Costs, Select Measures, Integrate Resources and Modify Forecasts, and Present Implementation and Evaluation Strategy. The Guidelines provide instructions and worksheets that can be used by a public water system in developing a water conservation plan. The last part of the document contains six appendixes of supporting information: detailed descriptions of conservation measures, conservation benchmarks, acronyms and a glossary, information resources, funding sources, and state contacts. The Guidelines do not contain any federal requirements; however, States and Indian Tribes may use the Guidelines to implement water conservation under their own laws.

3. Response to Public Comments

Twenty-six sets of public comments on the draft Guidelines were received, as well as comments from the LGAC. Responses to the most frequently expressed, substantive comments are provided below.

Comment: Implementation of the Guidelines should be at a State's discretion; the Guidelines should never become mandatory.

Response: SDWA stipulates that the Guidelines are for the voluntary use by States and the document reiterates this.

Comment: Only one water conservation plan should be required of a water system; the Guidelines should be consistent with those of the U. S. Bureau of Reclamation.

Response: This is an implementation issue that States decide. The Guidelines do not preclude a State from developing a multi-purpose plan requirement that is consistent with the Bureau of Reclamation's guidelines.

Comment: The draft Guidelines do not recognize that in many States the primacy agency, State Revolving Fund (SRF) agency and water conservation agency are separate entities.

Response: The Guidelines recognize in Part 1, Information to States, the need for States to coordinate among various agencies and suggest a formal delineation of responsibilities.

Comment: More emphasis is needed on the environmental benefits of water conservation, especially that of protecting water resources.

Response: The Guidelines now discuss more fully the environmental benefits of water conservation which include protection of both surface and ground water supplies, maintenance of in-stream flows, and protection of aquatic habitats.

Comment: The Basic Guidelines are too complex for systems which serve less than 10,000 people. A cost-benefit analysis should not be included.

Response: The Basic Guidelines have been significantly simplified. The number of sections has been reduced from nine to five; and the cost-benefit analysis has been deleted.

Comment: The Modified Basic Approach should be clarified.

Response: The Modified Basic Approach, renamed the Capacity-Development Approach, is explained more fully in Section 5 of Part 1. The Capacity-Development Approach can be implemented in conjunction with a State's capacity development strategy required by section 1420(c) of SDWA. It is a way for a State to directly address a small system's lack of conservation planning and implementation capacity through technical and financial assistance in lieu of any SRF water conservation planning requirement.

Comment: All systems should consider the full range of conservation measures; the three level system in the Guidelines is too prescriptive and limited.

Response: Text and graphics have been revised to encourage water systems to consider the broadest range of measures applicable to their situation. An explanation is also provided that the list of measures is not intended to be comprehensive and that measures may improve or expand in the future as new technologies and techniques are developed.

Comment: Not enough discussion is provided about possible obstacles to

conservation, including water rights limitations, public utility commission restrictions, and short-term financial impacts.

Response: The Guidelines now has a section in Part 1 devoted to State policy considerations, particularly the possible disincentives to conservation related to water rights and investor-owned utility regulation. The Guidelines also contain a Revenue Effects section that elaborates more on that issue.

Comment: Tying water conservation planning to the Drinking Water State Revolving Fund (DWSRF) program is not reasonable or warranted; public health should be the priority.

Response: States can link water conservation to their DWSRF program at their option. Water conservation can enhance the achievement of public health goals by reducing capital and operating costs of infrastructure, thereby stretching limited loan funds.

Comment: Include criteria that States could use to exempt systems from a planning requirement.

Response: The Guidelines do not preclude exemptions, States are in the best position to determine the circumstances under which an exemption should be granted. Use of the Capacity-Development Approach should greatly reduce the need for exemptions.

4. Outreach to States

EPA is making plans to assist States in the implementation of water conservation programs through workshops, models, success stories and other outreach. In addition, EPA plans to prepare comparable guidelines for the Clean Water SRF program. We also envision updating the Guidelines within five years.

5. Distribution of the Guidelines

During August, EPA will mail the Guidelines to approximately 500 state officials, municipalities, organizations and individuals. The Guidelines may also be viewed and down-loaded from EPA's homepage, http://www.epa.gov/OWM/genwave.htm. Both HTML and PDF versions are available. Paper copies may also be obtained by contacting the Office of Water Resource Center: telephone (202) 260–7786 (24 hour voice mail), fax at (202) 260–0386, or electronic mail to waterpubs@epamail.epa.gov.

6. Docket

The administrative record for this notice has been established under docket number W–98–14, and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, U.S. EPA, 401 M Street, Washington, D.C. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

Dated: August 2, 1998.

J. Charles Fox,

Acting Assistant Administrator for Water.

[FR Doc. 98–21034 Filed 8–5–98; 8:45 am]

BILLING CODE 6560–50–U

federal register

Thursday
August 6, 1998

Part IV

Department of Health and Human Services

Food and Drug Administration

CFR Part 165

Beverages: Bottled Water; Final Rule

Bottled Water: Monitoring Requirements; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 98N–0294]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation.

SUMMARY: The Food and Drug Administration (FDA) is confirming the provisions in the direct final rule that published in the **Federal Register** of May 11, 1998, to lift the stay of the effective date for the allowable levels in the bottled water quality standard for nine chemical contaminants, i.e., antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and 2,3,7,8–TCDD (dioxin), which were published on March 26, 1996.

DATES: The effective date for the rule published at 63 FR 25764 (May 11, 1998) and corrected at 63 FR 30620 (June 5, 1998) is confirmed as February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Henry Kim,Center for Food Safety and Applied Nutrition (HFS–306),Food and Drug Administration,200 C St. SW.,Washington, DC 20204,202–260–0631.

SUPPLEMENTARY INFORMATION: FDA published a direct final rule on May 11, 1998 (63 FR 25764), that was intended to lift the stay of the effective date for the allowable levels in the bottled water quality standard (§ 165.110 (21 CFR 165.110)) for nine chemical contaminants, i.e., antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin, that the agency established in a final rule that published on March 26, 1996 (61 FR 13258). By lifting the stay of the effective date, each lot of bottled water would be required to comply with the allowable levels for these nine chemical contaminants and bottled water manufacturers would be required to monitor source waters and finished bottled water products at least once a year for these nine chemical contaminants under the current good manufacturing practice (CGMP) regulations for bottled water in part 129 (21 CFR part 129). In response to the direct final rule, FDA received no significant adverse comment about lifting the stay of the effective date for the allowable levels for the nine chemical contaminants in the quality standard for bottled water (§ 165.110). However, FDA received a significant adverse comment about the monitoring requirements in part 129 that would apply to these nine chemical contaminants as a result of the lifting of the stay. Because of the significant adverse comment received, FDA is unable to promulgate monitoring requirements within the statutory time period, i.e., by August 6, 1998, set forth in section 410(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349(b)(1)). Therefore, each lot of bottled water will be required to comply with the allowable levels for these nine chemical contaminants, however, the monitoring requirements in part 129 do not apply to the nine chemical contaminants in bottled water and instead, under section 410(b)(4)(B) of the act, FDA is addressing monitoring requirements for the nine chemical contaminants in bottled water in a companion notice published elsewhere in this issue of the **Federal Register**.

FDA is confirming the lifting of the stay of the effective date for the allowable levels in § 165.110 for the nine chemical contaminants, effective February 2, 1999.

Dated: August 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–21135 Filed 8–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0294]

Bottled Water: Monitoring Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the monitoring requirements under the national primary drinking water regulations (NPDWR's) found in 40 CFR part 141 for antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and 2,3,7,8–TCDD (dioxin), will be considered to be the standard of quality regulations applicable to these chemical contaminants in bottled water.

DATES: Effective February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Henry Kim, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–0631.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 26, 1996 (61 FR 13258), FDA published a final rule (the March 1996 final rule) in which it amended the bottled water quality standard in 21 CFR part 165 by establishing allowable levels for 24 chemical contaminants in bottled water. In that final rule, FDA stayed the effective date for the allowable levels for nine of the chemical contaminants, specifically, antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and 2,3,7,8–TCDD (dioxin). As a result, the current good manufacturing practice (CGMP) regulations under part 129 (21 CFR part 129) for bottled water were not in effect for these nine contaminants during the period of the stay.

Subsequent to the March 1996 final rule, on August 6, 1996, the Safe Drinking Water Act (SDWA) Amendments were enacted. Under the SDWA Amendments (section 410(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349(b)(1)), for contaminants covered by a standard of quality regulation promulgated by FDA before the enactment of the SDWA Amendments for which an effective date had not been established (i.e., standard of quality regulations for the nine chemical contaminants: antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and dioxin), FDA is required to promulgate monitoring requirements for such contaminants not later than 2 years after the date of enactment of the SDWA Amendments, i.e., by August 6, 1998. If FDA does not meet this statutory time period, the NPDWR's for the nine chemical contaminants are considered to be the standard of quality regulation, and therefore, the monitoring requirements under the NPDWR are applicable to bottled water, and are to take effect no later than February 2, 1999.

Under this statutory mandate, FDA published a direct final rule on May 11, 1998 (63 FR 25764), to lift the stay of the effective date for the allowable levels in the bottled water quality standard for nine chemical contaminants. An effect of the direct final rule would have been to promulgate FDA's existing monitoring requirements for bottled water as the monitoring requirements for these nine contaminants in bottled water. By lifting the stay of the effective date, bottled water manufacturers would have been required to monitor source waters and finished bottled water products at least once a year for these nine chemical contaminants under the CGMP regulations for bottled water in part 129. FDA also published a companion proposed rule in the same issue of the **Federal Register**.

Because FDA received significant adverse comment about monitoring requirements for these nine contaminants, FDA is unable to promulgate monitoring requirements for the nine contaminants by August 6, 1998. Therefore, the monitoring requirements under the NPDWR's for these nine contaminants shall be considered, under section 410(b)(4)(A) of the act, to be the standard of quality regulation for bottled water. FDA is giving notice, as required by section 410(b)(4)(B) of the act, that the monitoring requirements for these nine contaminants in the NPDWR's in 40 CFR part 141 are the monitoring requirements for these nine contaminants in bottled water, effective February 2, 1999. FDA intends to provide guidance concerning how it will apply these requirements to bottled water in the near future. Furthermore, FDA plans to publish a withdrawal of the companion proposed rule (63 FR 25789, May 11, 1998) that published on the same day as the direct final rule. The direct final rule is discussed elsewhere in this issue of the **Federal Register**.

Dated: August 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Commissioner.

[FR Doc. 98–21136 Filed 8–5–98; 8:45 am]

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To facilitate the sale of certain land in Tahoe National Forest in the State of California to Placer County, California. (July 29, 1998; 112 Stat. 879)

H.R. 1460/P.L. 105–209

To allow for election of the Delegate from Guam by other than separate ballot, and for other purposes. (July 29, 1998; 112 Stat. 880)

H.R. 1779/P.L. 105–210

To make a minor adjustment in the exterior boundary of the Devils Backbone Wilderness in the Mark Twain National Forest, Missouri, to exclude a small parcel of land containing improvements. (July 29, 1998; 112 Stat. 881)

H.R. 2165/P.L. 105–211

To extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 3862 in the State of Iowa, and for other purposes. (July 29, 1998; 112 Stat. 882)

H.R. 2217/P.L. 105–212

To extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 9248 in the State of Colorado, and for other purposes. (July 29, 1998; 112 Stat. 883)

H.R. 2841/P.L. 105–213

To extend the time required for the construction of a hydroelectric project. (July 29, 1998; 112 Stat. 884)

H.R. 2870/P.L. 105–214

To amend the Foreign Assistance Act of 1961 to facilitate protection of tropical forests through debt reduction with developing countries with tropical forests. (July 29, 1998; 112 Stat. 885)

H.R. 3156/P.L. 105–215

To present a congressional gold medal to Nelson Rolihlahla Mandela. (July 29, 1998; 112 Stat. 895)

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Homeowners Protection Act of 1998 (July 29, 1998; 112 Stat. 897)

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